A

DIGEST OF INDIAN LAW CASES

CONTAINING

HIGH COURT REPORTS

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, 1916,

WITH AN INDEX OF CASES,

BEING A SUPPLEMENT TO THE CONSOLIDATED DIGEST OF INDIAN LAW CASES, 1836—1909.

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

B. D. BOSE

OF THE INNER TEMPLE BARRISTER-AT-LAW; ADVOCATE OF THE HIGH COURT, CALCUTTA, AND EDITOR OF THE INDIAN LAW REPORTS, CALCUTTA SERIES.

CALCUTTA
SUPERINTENDENT GOVERNMENT PRINTING, INDIA
1917

Price Four Rupees.
English Price Six Shillings.

Agents for the Sale of Books Published by the Superintendent of Government Printing India, Calcutta.

IN EUROPE.

Constable & Co. 10, Orange Street, Leicester Square, London, W.C.

Kegan Paul, Trench, Trübner & Co., 68-74, Carter Lane, E.C., and 25, Museum Street, London, W.C.

Bernard Quaritch, 11, Grafton Street, New Bond Street, London, W.

P. S. King & Sons, 2 & 4, Great Smith Street, Westminster, London, S.W.

H. S. King & Co., 65, Cornhill, E.C., and 9, Pall Mall, London, W.

Grindlay & Co., 54, Parliament Street, London, S.W.

Luzac & Co., 46, Great Russell Street, London, W.C.

W. Thacker & Co., 2, Creed Lane, London, E.C.

T. Fisher Unwin, Ltd., 1, Adelphi Terrace, London, W.C.

Wm. Wesley & Son, 28, Essex St., Strand, London.

B. H. Blackwell, 50 & 51, Broad Street, Oxford.

Deighton Bell & Co., Ltd., Cambridge.

Oliver and Boyd, Tweeddale Court, Edinburgh.

E. Ponsonby, Ltd., 116, Grafton Street, Dublin.

Ernest Leroux, 28, Rue Bonaparte, Paris.

Martinus Nijhoff, The Hague, Holland.

IN INDIA AND CEYLON.

Thacker, Spink & Co., Calcutta and Simla.

Newman & Co., Calcutta.

R. Cambray & Co., Calcutta.

S. K. Lahiri & Co., Calcutta.

B. Banerjee & Co., Calcutta.

The Indian School Supply Depôt, 309, Bow Bazar Street, Calcutta, and 226, Nawabpur, Dacca.

Butterworth & Co. (India), Ltd., Calcutta.

Rai M. C. Sarcar Bahadur & Sons, 90-2A, Harrison Road, Calcutta.

The Weldon Library, 18-5, Chowringhee Road, Calcutta.

Standard Literature Company, Limited, Calcutta.

Lal Chand & Sons, Calcutta.

Higginbotham & Co., Madras.

V. Kalyanarama Iyer & Co., Madras.

G. A. Natesan & Co., Madras.

S. Murthy & Co., Madras.

Thompson & Co., Madras.

Temple & Co., Madras.

E. R. Rama Iyer & Co., Madras.

Vas & Co., Madras.

V. M. Gopalakrishna Kone, Madura.

Thacker & Co., Ltd., Bombay.

A. J. Combridge & Co., Bombay.

D. B. Taraporevala, Sons & Co., Bombay.

Mrs. Radhabai Atmaram Sagoon, Bombay.

Sunder Pandurang, Bombay.

Gopal Narayan & Co., Bombay.

Ram Chandra Govind & Son, Kalbadevi, Bombay.

A. H. Wheeler & Co., Allahabad, Calcutta and Bombay.

N. B. Mathur, Supt., Nazir Kanun Hind Press, Allahabad.

Rai Sahib M. Gulab Singh & Sons, Mufid-i-Am Press, Lahore.

Rama Krishna & Sons, Lahore.

Supt., American Baptist Mission Press, Rangoon.

Manager, the "Hitavada," Nagpur.

S. C. Talukdar, Proprietor, Students and Company, Cooch Behar.

A. M. & J. Ferguson, Ceylon.

Manager, Educational Book Depôts, Nagpur and Jubbulpore.*

Manager of the Imperial Book Depôt, 63, Chandney Chauk Street, Delhi.*

Manager, "The Agra Medical Hall and Co-operative Association, Ltd." (Successors to A. John & Co., Agra).*

Supt., Basel Mission Book and Tract Depository, Mangalore.*

P. Varadachary & Co., Madras.*

H. Liddell, Printer, etc., 7, South Road, Allahabad.*

Ram Dayal Agarwala, 184, Katra, Allahabad.*

D. C. Anand & Sons, Peshawar.*

Manager, Newal Kishore Press, Lucknow.*

* Agents for the sale of Legislative Department publications only.

PREFACE.

THIS Volume is published as a supplement to the new Consolidated Digest, 1836—1909. It contains the cases reported in the four Series of the Indian Law Reports for 1916, and the Law Reports, Indian Appeals and the Calcutta Weekly Notes for the year 1915-16.

The different sets of Law Reports in which the same cases have been reported, are specifically noted in the "Table of Cases" published with this Volume.

For easy reference, several words and phrases, which are expounded in the judgments digested in this volume, are given in a separate list arranged in alphabetical order, under the heading "Words and Phrases."

B. D. BOSE.

HIGH COURT, CALCUTTA:
The 23rd July 1917.

CONTENTS.

		PAGE.
HIGH COURT, CALCUTTA	1916	vii
HIGH COURT, BOMBAY		vii
HIGH COURT, MADRAS		viii
HIGH COURT, ALLAHABAD		viii
THE PRIVY COUNCIL		ix
TABLE OF REPORTS DIGESTED		x
TABLE OF HEADINGS, SUB-HEADINGS AND CROSS-REFERENCES		xi
TABLE OF CASES IN THE DIGEST		xxiii
DIGEST OF CASES		Col. 1

THE HIGH COURT, CALCUTTA, 1916.

CHIEF JUSTICE:

The Hon'ble SIR LANCELOT SANDERSON, KT., K.C.

PUISNE JUDGES:

The Hon'ble SIR JOHN G. WOODROFFE, KT.
" " " ASHUTOSH MOOKERJEE, KT., C.S.I.
" " " HERBERT HOLMWOOD, KT. (*Retired*).
" " " CHARLES CHITTY, KT.
" " E. E. FLETCHER.
" " S. SHARFUDDIN.*
" " D. CHATTERJEE.
" " N. R. CHATTERJEA.
" " W. TEUNON.
" " T. W. RICHARDSON.
" " A. CHAUDHURI.
" " S. HASAN IMAM (*Resigned*).
" " C. P. BEACHCROFT.
" " H. WALMSLEY.
" " E. P. CHAPMAN * (*Additional*).
" " B. K. MULLICK * (*Additional*).
" " W. E. GREAVES.
" " B. B. NEWBOULD.
" " F. R. ROE * (*Offg.*).
" " R. SHEEPSHANKS (*Offg.*).
" " A. H. CUMING (*Offg.*).
" " M. SMITHER (*Offg.*).

The Hon'ble G. H. B. KENRICK, K.C., *Advocate-General* (*Retired*).
" " SIR SATYENDRA SINHA, *Advocate-General* (*Offg.*).
" " B. C. MITTER, *Standing Counsel*.

THE HIGH COURT, BOMBAY, 1916.

CHIEF JUSTICE:

The Hon'ble SIR BASIL SCOTT, KT., *On deputation*.
" " " S. L. BATCHELOR, KT. (*Acting*).

PUISNE JUDGES:

The Hon'ble SIR S. L. BATCHELOR, KT.
" " " DINSHA D. DAVAR, KT. (*Died*).
" " F. C. O. BEAMAN.
" " SIR J. J. HEATON, KT.
" " N. C. MACLEOD.
" " L. A. SHAH.
" " N. W. KEMP (*Acting*).
" " A. M. KAJIJI (*Acting*).
" " A. B. MARTEN.

The Hon'ble M. R. JARDINE, *Advocate-General* (*Resigned*).
" " T. J. STRANGMAN, *Advocate-General*.
MR. G. D. FRENCH, *Legal Remembrancer*.

* Appointed Judge of the Patna High Court from the 1st March, 1916.

THE HIGH COURT, MADRAS, 1916.

CHIEF JUSTICE:

The Hon'ble Sir John Wallis, Kt.
„ „ Abdur Rahim (*Acting*).

PUISNE JUDGES:

The Hon'ble Abdur Rahim.
„ „ Sir William B. Ayling, Kt.
„ „ F. DuPre Oldfield.
„ „ T. Sadasiva Ayyar, *Diwan Bahadur.*
„ „ C. G. Spencer.
„ „ V. M. Coutts Trotter.
„ „ T. V. Seshagiri Ayyar.
„ „ J. H. Bakewell (*Additional*).
„ „ C. F. Napier (*Additional*).
„ „ C. V. Kumaraswami Sastriyar, *Diwan Bahadur* (*Additional*).
„ „ K. Srinivasa Ayyangar (*Additional*).
„ „ W. W. Phillips (*Offg.*).
„ „ L. G. Moore (*Offg.*).
„ „ C. Krishnan (*Offg.*).
„ „ J. G. Burn (*Offg.*).

ADVOCATE GENERAL:

The Hon'ble S. Srinivasa Ayyangar.

THE HIGH COURT, ALLAHABAD, 1916.

CHIEF JUSTICE:

The Hon'ble Sir Henry G. Richards, Kt., K.C.
„ „ „ George E. Knox, Kt. (*Acting*).

PUISNE JUDGES:

The Hon'ble Sir George E. Knox, Kt.
„ „ „ Pramada Charan Banerji, Kt.
„ „ William Tudball.
„ „ Muhammad Rafiq.
„ „ Theodore Caro Piggott.
„ „ Henry Cecil Walsh, K.C.
„ „ Benjamin Lindsay (*Offg.*).
„ „ Pandit Sundar Lal, C.I.E. (*Offg.*).
„ „ Louis Stuart (*Offg.*).

THE PRIVY COUNCIL, 1916.

LORD BUCKMASTER, *Lord Chancellor.*
EARL OF HALSBURY.
EARL LOREBURN.
VISCOUNT HALDANE.
LORD DUNEDIN.
LORD ATKINSON.
LORD SHAW.
LORD MERSEY.
LORD MOULTON.
LORD PARKER OF WADDINGTON.
LORD SUMNER.
LORD PARMOOR.
LORD WRENBURY.
SIR ARTHUR CHANNELL.
SIR SAMUEL GRIFFITH, G.C.M.G.
SIR EDMUND BARTON, G.C.M.G.
SIR JOHN EDGE.
SIR CHARLES FITZPATRICK, G.C.M.G
SIR JOSHUA WILLIAMS.
SIR JAMES ROSE-INNES, K.C.M.G.
SIR LAWRENCE JENKINS, K.C.I.E.
SYED AMEER ALI, C.I.E.

And those other members of the Privy Council who are within the provisions of the Statutes 3 & 4 Will. IV, c. 41, 44 Vict. c. 3, and 50 & 51 Vict. c. 70.

TABLE OF REPORTS DIGESTED.

Reports.	Period.	Number of volumes.	In what Court.	Abbreviations.
Indian Law Reports :—				
Calcutta Series, Vol. 43 .	1916	1	High Court, Calcutta, and Privy Council.	I. L. R. Calc.
Bombay Series, Vol. 40 .		1	High Court, Bombay, and Privy Council.	I. L. R. Bom.
Madras Series, Vol. 39 .		1	High Court, Madras, and Privy Council.	I. L. R. Mad.
Allahabad Series, Vol. 38 .		1	High Court, Allahabad, and Privy Council.	I. L. R. All.
Calcutta Weekly Notes, Vol. 20.	1915-16	1	High Court, Calcutta, and Privy Council.	C. W. N.
Law Reports, Indian Appeals, Vol. 43.		1	Privy Council . . .	L. R. I. A.
		6		

TABLE

OF

HEADINGS, SUB-HEADINGS AND CROSS-REFERENCES IN THE DIGEST.

1916.

The headings and sub-headings under which the cases are arranged, are printed in this table in capitals, the headings in black type and the sub-headings in small capitals. The cross-references are printed in ordinary type.

Abatement of Suit.
Abdication.
Abetment.
ABKARI ACT (MAD. I OF 1886).
Absconding Offender.
Absconding Person.
Acceptance by Pleader.
ACCOUNT.
Account Books.
Accused.
Acknowledgment.
Acknowledgment of Debt.
Acknowledgment of Son.
ACQUIESCENCE.
Acquisition.
Acquittal.
Acts.
Additional Evidence.
ADEN SETTLEMENT REGULATION (VII OF 1900).
Adjustment of Suit.
Administration Suit.
Administratrix.
ADMIRALTY JURISDICTION.
Admission.
Adopted Son.
Adoption.
ADVERSE POSSESSION.
Advocate-General.
Agency.
Agency Tracts.
Agent.
AGRA TENANCY ACT (II OF 1901).
AGREEMENT.
Agreement to Sell.
Agriculturist.
ALIEN ENEMY, SUIT AGAINST.
Alienation.
Alimony.
ALIYASANTANA LAW.
Ancestral Property
Annuity
Anonymous Communication.
Anticipatory Breach.
APPEAL.
APPEAL TO PRIVY COUNCIL.
Appearance.
Appellate Side Rules.
Application.
Apportionment of Rent.
ARBITRATION.
Arbitration Act (IX of 1899).
Arbitration in London.
Arbitrator.
Arms.
Arrest.

Assam Land and Revenue Regulation (I of 1886).
ASSESSMENT.
Assignee.
Assignment of Debt.
Attaching Creditor.
Attachment.
ATTACHMENT BEFORE JUDGMENT.
Attestation.
ATTORNEY.
ATTORNEY'S LIEN FOR COSTS.
Auction Sale.
Award.
Award-decree.

BAILABLE OFFENCE.
Bailor and Bailee.
Balance of Mortgage Money.
Bandhu.
Baroda-Court Decree.
Belchambers' Rules and Orders.
Benami Purchase.
BENAMI PURCHASER.
Benami Transaction.
BENAMIDAR.
Bengal Acts.
Bengal Chamber of Commerce.
Bengal District Gazetteer.
BENGAL MUNICIPAL ACT (BENG. III OF 1884).
Bengal Regulations.
BENGAL TENANCY ACT (VIII OF 1885).
Bequest.
BHAGDARI AND NARVADARI ACT (BOM. V OF 1862).
Bill of Lading.
Bombay Acts.
Bombay Cotton Trade Association Rules.
BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. III OF 1901).
BOMBAY HEREDITARY OFFICES ACT (BOM. III OF 1874).
Bombay Prevention of Gambling Act (Bom. IV of 1887).
Bombay Regulations.
Bona fide Claim.
Bona fides.
Bond.
Boundaries Act (XXVIII of 1860).
Boundary Settlement Officer.
Breach of Contract.
Breach of Trust.
British Court.
BROKERAGE CONTRACT.
Bundelkhand Alienation of Land Act (II of 1903).
Burden of Proof.

C. I. F. Contract.
Calcutta Baled Jute Association.
Calcutta Improvement Act (Beng. V of 1911).
Calcutta Municipal Act (Beng. III of 1899).
Carrier.
Carriers.
Carriers Act (III of 1865).
Carriers by Sea.
Caste.
Cause of Action.
Central Bureau Register.
Certificate of Purchase.
Certificate of Succession.
Certification of Payment.
Certified Copy.
Certiorari.
Cess.
Change of Village.
Charge.
Charge to Jury.
Charitable or Religious Trust.
CHARITABLE TRUST.
Charter Act (24 & 25 Vic., c. 104).
Charter Party.
Chaukidari Chakaran Land.
Chaukidari Chakaran Lands Act (Beng. VI of 1870).
Chetty Money-lending Firm.
CHOTA NAGPUR TENANCY ACT (BENG. VI OF 1908).
Chowkidari Chakran Lands.
CHURCH.
Church Authorities.
Civil and Revenue Courts.
CIVIL COURT.
Civil Courts Act.
CIVIL PROCEDURE CODES.
CIVIL RULES OF PRACTICE.
Claim Petitions.
Claim Proceedings.
Co-defendants.
Co-executors.

Co-heirs.
Co-owners.
CO-SHARER.
Co-wives, Sons of.
Collector.
Collision Case.
Commitment.
Common Carriers.
COMMON MANAGER.
COMPANIES ACT (VI OF 1882).
COMPANIES ACT (VII OF 1913).
Company.
Compensation.
Complainant.
Complaint.
Composition of Offence.
Compound Interest.
Compounding Criminal Case.
Compounding of Offence.
COMPROMISE.
Compulsion of Law.
Confession and Statement.
Confidential Communications.
Consent Decree.
Consideration.
Consideration of Hundi.
Consolidation of Appeals.
Construction.
Construction of Contract.
CONSTRUCTION OF DEED.
CONSTRUCTION OF DOCUMENTS.
CONSTRUCTION OF STATUTES.
Constructive Notice.
Contempt of Court.
Contingent Bequest *in futuro.*
CONTRACT.
CONTRACT ACT (IX OF 1872).
Contract, C. I. F.
Contract to lend or borrow.
CONTRIBUTION.
Contributary.
Conversion.
Converts.
Conveyance.
Conviction.
Coparcener.
Copy of forged Document.
COPYRIGHT.
Corporation.
Corruption.
COSTS.
Councillor.
Court.
Court-auction.
Court-fee.
COURT-FEES ACT (VII OF 1870).
Court Fees Amendment Act, 1905.
Court of Wards.
COURT OF WARDS ACT (BENG. IX OF 1879)
Court of Wards Act (Bom. I of 1905).
Court Sale.
Cotton Goods.
Covenants.
Criminal Appeal.
Criminal Intent.
CRIMINAL PROCEDURE CODE, 1898.
CRIMINAL REVISION.
Criminal Sessions, High Court.
CRIMINAL TRESPASS.
Cross Appeal.
Cross Claims.
Cross Decrees.
Cross Examination.
Cross Objection
Currency Note.
CUSTOM.
Custom of Succession.

Damage.
DAMAGES.
Dancing Woman.
Date of Birth.
Dattaka Chandrika.
Daughter.
Dayabhaga School.
Deaf and Dumb Accused.
Death.
Debit.
Debt.
Debtor.
Debtor and Creditor.
Declaration.
Declaration and Injunction.
Declaration of Title.
Declaratory Decree.
DECLARATORY DECREE, SUIT FOR.
DECREE.

DECREE AGAINST A MAJOR AS MINOR.
DECREE FOR POSSESSION.
Decree-holder.
Deed, Construction of.
Defamation.
Defamatory Statement.
Default.
Defence.
Defendant.
DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).
Demonstrative Legacy.
Dependent Relative Revocation.
DEPOSIT IN COURT.
Deposit of money.
Deposit of Security.
Devolution of Interest.
DIGWARI TENURE.
Digwars.
Directors of Bank.
Disability.
Disciplinary Proceedings.
Disclaimer.
Discretion of Court.
Dismissal Suit.
Disqualified Proprietor.
Distraint.
Distress.
Distribution of Proceeds.
District Board.
District Court.
District Judge.
District Magistrate.
Divesting of Est te.
Divisional Court.
DIVORCE ACT (IV OF 1869).
Document.
Documents.
Documents, Construction of.
Dower.
Drink.

EASEMENT.
EASEMENTS ACT (V OF 1882).
East India Company.
Ejectment.
EMERGENCY LEGISLATION CONTINUANCE ACT (I OF 1915).
Emoluments.
Encumbrance.
Endorsement.
Endorsement of Documents.
Enmity or Hatred.
Equitable Mortgage.
Equity of Redemption.
Estate.
Estates Partition Act (Beng. V of 1897).
ESTOPPEL.
EUROPEAN BRITISH SUBJECT.
EVIDENCE.
EVIDENCE ACT (I OF 1872).
EX PARTE DECREE.
Excommunication.
Execution.
Execution Application.
EXECUTION OF DECREE.
EXECUTION SALE.
Executor.
Executorship.
Executrix.
EXPECTANCIES.

Fact.
FALSE INFORMATION.
False Information to Police.
Family Arrangement.
Family Record.
FAMILY SETTLEMENT.
Father's Estate.
Father's Heirs.
Female Heirs.
Ferry.
Final Decree.
Finding of Facts.
First class Magistrate.
Fitness of Surety.
Force Majeure.
FOREIGN COURT.
FOREIGN DECREE.
FOREIGN JUDGMENT.
Forest Act (VII of 1878).
Forfeiture.
Forged Document.
FORGERY.
Forward Contract.
Founder.
FRAUD.

Fraudulent Execution.
FRAUDULENT PREFERENCE.
Fraudulent Representation.
Fraudulent Suppression.
Freight.
FULL BENCH.

Gambling.
Garnishee.
General Repealing Act (XII of 1873).
Gift.
Godowns.
Goods.
Government.
Government Lands.
Government of India Act, 1915.
Government Order.
Government Proclamations.
Government Sale.
Government Servants' Conduct Rules.
Government Solicitor.
Grace, Days of.
Gramopadhya.
GRANT.
Gravel.
Great-grandfather's Son's Daughter's Son.
Grievous Hurt.
Guardian.
GUARDIAN AD LITEM.
GUARDIAN AND MINOR.
GUARDIANS AND WARDS ACT (VIII OF 1890).
Guardianship.

Habeas Corpus.
Hearsay Evidence.
Heir.
High Court.
High Court Criminal Sessions.
High Court General Rules and Circular Orders.
High Court, jurisdiction of.
High Courts Act (24 & 25 Vic., c. 104).
Hindu Converts.
Hindu Family.
HINDU LAW—ADOPTION.
HINDU LAW—ALIENATION.
HINDU LAW—ALIENATION BY WIDOW.
HINDU LAW—COPARCENER.
HINDU LAW—DAUGHTER'S ESTATE.
HINDU LAW—DEBT.
HINDU LAW—ENDOWMENT.
HINDU LAW—GIFT.
HINDU LAW—GUARDIANSHIP.
HINDU LAW—IMPARTIBLE ESTATE.
HINDU LAW—INFANT.
HINDU LAW—INHERITANCE.
HINDU LAW—JOINT FAMILY.
HINDU LAW—JOINT FAMILY PROPERTY.
HINDU LAW—MAINTENANCE.
HINDU LAW—MARRIAGE.
HINDU LAW—MITAKSHARA.
HINDU LAW—PARTITION.
HINDU LAW—RELIGIOUS ENDOWMENT.
HINDU LAW—REVERSIONER.
HINDU LAW—STRIDHAN.
HINDU LAW—SUCCESSION.
HINDU LAW—WIDOW.
HINDU LAW—WILL.
HINDU LAW—WOMAN'S ESTATE.
Hindu Widow.
Hindu Woman.
HISTORICAL WORKS.
Holder.
Home Guarantee.
Hostile Firm.
Hostile Foreigner's Trading Order
HUNDI.
Husband's Debt.
Hypothecation.

Identity.
Illegitimate Son.
Illustrations to Statutes.
IMMOVEABLE PROPERTY.
Impartible Estate.
Impartible Zamindari.
Impossible Contract.
Inam.
Inam Service
INCOME-TAX ACT (II OF 1886).
Incorporated Company.
INCUMBRANCE.
Indian Companies Act.
Infancy.
Inheritance.
Injunction.
Inquiry.

INSOLVENCY.
Instalments.
Instrument of Gaming.
Instrument of Title.
Insurance.
Intention.
Intention of Founder.
INTEREST.
Interference.
International Law.
Internment.
Interpretation.
INTERROGATORIES.
Investigation.
Irregularity.
Istemrari Mokarari.

Jail Register.
Jajnavalkya.
JOINDER OF CASES.
Joint Bond.
Joint Debtors.
JOINT ESTATE.
Joint Family.
Joint-family Property.
Joint Hindu Family.
Joint Immoveable Property.
JOINT JUDGMENT-DEBTORS.
Joint Probate.
JOINT PROPERTY.
Joint Tort-feasors.
Joint Trial.
Joshi Vatandar.
Judge.
Judgment.
Judgment Debt.
Judgment-debtors.
Judgment of a Single Judge.
Judicial Commissioner.
Judicial Proceedings.
JURISDICTION.
Jurisdiction and Claim.
Jurisdiction of Civil Court.
Jurisdiction of District Court.
Jurisdiction of High Court.
Jurisdiction of Magistrate.
JURY.
Justice, Equity and Good Conscience.
Justice of the Peace.
Justification.

Karnavan
Karta.
Kazi.
Khandesh District.
Khoti Settlement Act (Bom. I of 1880).
Kidnapping.
Kudivaram Right.

Labourer.
Lakheraj.
Lambardar.
Land.
LAND ACQUISITION.
LAND ACQUISITION ACT (I OF 1894).
Landholder.
Land Improvement Loans Act (XIX of 1883).
LANDLORD AND TENANT.
1. AGRICULTURAL LEASE.
2. EJECTMENT.
3. INTEREST
4. OCCUPANCY RIGHT.
5. RENT.
6. TRANSFER.
Land Revenue Code (Bom. V of 1879)
Lawful Apprehension.
LEASE.
Leave of Court.
Leave to Appeal to Privy Council.
Legal Interest.
Legal Necessity.
Legal Practitioner.
LEGAL PRACTITIONERS ACT (XVIII OF 1879).
Legal Representative.
Legatee.
Legislation.
Legitimacy.
Lessee.
Lessor.
LESSOR AND LESSEE.
Letters of Administration.
LETTERS PATENT (24 & 25 VIC., C. 104).
LETTERS PATENT, 1865.
LETTERS PATENT APPEAL.
LETTERS PATENT, PATNA.
License.

LIMITATION.
Limitation Act, 1877.
LIMITATION ACT, 1908.
Lingayet Panch-kalas Marriage.
LIQUIDATION.
Liquidator.
Loan or Deposit.
Local Inspection.
Locus Pœnitentiæ.
Lower Appellate Court.
Lunacy.
LUNACY ACT (IV OF 1912).
Lurking House-trespass.

Madras Acts.
MADRAS CITY MUNICIPAL ACT (III OF 1904).
MADRAS CITY POLICE ACT (III OF 1888).
MADRAS CIVIL COURTS ACT (III OF 1873).
MADRAS ESTATES LAND ACT (I OF 1908).
MADRAS FOREST ACT (XXI OF 1882).
MADRAS IAND ENCROACHMENT ACT (III OF 1905).
MADRAS LOCAL BOARDS ACT (V OF 1884).
MADRAS PLANTERS LABOUR ACT (I OF 1903).
Madras Port Trust Act (II of 1905).
MADRAS PROPRIETORY ESTATES VILLAGE SERVICE ACT (II OF 1894).
Madras Rent Recovery Act (VIII of 1865).
MADRAS VILLAGE COURTS ACT (I OF 1889).
MADRAS WATER-CESS ACT (VII OF 1865).
Magistrate.
Mahad.
Mahant.
MAHOMEDAN LAW—ACKNOWLEDGMENT OF SONSHIP.
MAHOMEDAN LAW—CUSTOM.
MAHOMEDAN LAW—DOWER.
MAHOMEDAN LAW—ENDOWMENT.
MAHOMEDAN LAW—GIFT.
MAHOMEDAN LAW—WAKF.
Maintenance.
Majority Act (X of 1875).
Makbuza.
MALABAR LAW.
MALABAR TARWAD.
Malice.
Malik-o-qabiz.
Management.
Manager.
Marriage.
Marriage Custom.
Master.
Maternal Uncle.
Mathiri Kasuvu and Sadalwar.
Maxims.
Measure of Damages.
Memons.
Merger.
Mesne Profits.
Migration.
MINERALS.
Mining Lease.
MINOR.
Misconduct.
Misdirection.
Misjoinder of Charges.
MISTAKE.
Mitakshara.
MOGULI RENT.
Mombasa, Migration to.
Money.
MORTGAGE.
1. CONSTRUCTION.
2. CONTRIBUTION.
3. REDEMPTION.
4. SALE OF MORTGAGED PROPERTY.
5. SECURITY.
6. SEVERENCE OF MORTGAGEE'S INTEREST.
7. SIMPLE MORTGAGE.
8. SUBROGATION.
9. MISCELLANEOUS.
Mortgage Bond.
MORTGAGE DEBT.
MORTGAGE DECREE.
Mortgage of Immoveable Property.
Mortgage or Sale.
Mortgage Suit.
Mortgaged Property.
Mortgagee.
Mortgagor.
Mortgagor in Possession
Mosque.
Moveable Property.
Muafi Land.
Municipal Affairs, Aden.

Natural Son.
Negligence.
NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881).
Newspaper.
Next Friend.
NOABAD TALUK.
NON-COMPOUNDABLE OFFENCE.
NON-OCCUPANCY RAIYAT.
NON-TRANSFERABLE HOLDING.
Non-transferable Occupancy Holding
N.-W. P. Acts.
N.-W. P. AND OUDH MUNICIPALITIES ACT (X OF 1900).
N.-W. P. Land Revenue Act (XIX of 1873)
Notice.
Notice of Suit.
Notice to quit.
Notification of Payment.
NUISANCE.

Oath.
OATHS ACT (X OF 1873).
OCCUPANCY HOLDING.
OCCUPANCY RIGHT.
Offence.
OFFERINGS TO A TEMPLE.
Official Assignee.
Official Corruption.
Official Receiver.
Onus.
Onus of Proof.
OPIUM ACT (I OF 1878).
Order Absolute.
Otti-deed.
OUDH ESTATES ACT (I OF 1869).
OUDH LAND REVENUE ACT (XVII OF 1876).

Paik.
Parties.
PARTITION.
Partition by Collector.
Partition Deed.
PARTNERSHIP.
Partnership Property.
PATNA HIGH COURT.
Patni Tenure.
Pauper Plaint.
Payment.
PENAL CODE (ACT XLV OF 1860).
Penal Provisions.
PENALTY.
PERJURY.
Permanent Lease.
Perpetuities.
Perpetuity of Tenure.
Personal Inam.
PLAINT.
Plaintiff.
Pleader.
PLEADING AND PROOF.
PLEADINGS.
Pledge.
Police.
Police Act (V of 1861).
Police Patil.
Police Report.
Poramboke.
POSSESSION.
Power-of-Attorney.
PRACTICE.
Preamble.
PRE-EMPTION.
1. CUSTOM.
2. FORMALITIES.
3. MORTGAGE.
4. PRICE.
5. RIGHT OF PRE-EMPTION.
6. RULE OF PRE-EMPTION.
Preference.
Preferential Claim.
Prejudice.
Preliminary Decree.
Preliminary Point.
Prescriptive User.
PRESIDENCY BANKS ACT (XI OF 1876).
PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882).
PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909).
Press.
PRESS ACT (I OF 1910).
Presumption.
Previous Acquittal.
Previous Conviction.
Primogeniture.
Principal.
PRINCIPAL AND AGENT.

Principal and Interest.
Prior Mortgage.
Priority.
Private Defence.
Private Land.
Private Partition.
Private Pathway.
Privileges.
Privity.
Privy Council.
Privy Council Decisions.
Privy Council, Practice of.
PROBATE.
PROBATE AND ADMINISTRATION ACT (V OF 1881).
Probate Proceedings.
Procedure.
Professional Misconduct.
PROMISSORY NOTE.
Property.
Proprietary Title.
Prosecution.
Prosecution Witnesses.
Prospective Legislation.
Protection Order.
PROVINCIAL INSOLVENCY ACT (III OF 1907).
PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887).
Proviso.
PUBLIC GAMBLING ACT (III OF 1867).
Public Policy.
Public Street.
Public Way.
Public Works Department.
Publication.
Puisne Mortgagee.
Purchase of Arms.
Purchaser.
Purchaser of a Share.
Purdanashin Lady

Qadi.

RAILWAY.
Railway Receipt.
RAILWAYS ACT (IX OF 1890).
Raiyat's Interest.
Rateable Distribution.
Rating of Property.
RECEIVER.
RECORDS, POWER TO CALL FOR.
Rectification.
Rectification of Register.
REDEMPTION.
Redemption Suit.
Registered Company.
Registration.
REGISTRATION ACT (XVI OF 1908).
Registration Officer.
Regulations.
Re-hearing.
Release.
RELIGIOUS ENDOWMENTS ACT (XX OF 1863).
Religious Institution.
Relinquishment.
REMAND.
Removal of Structures.
Rent.
RENT DECREE.
RENT, SUIT FOR.
Renunciation.
Representation.
RESCUE FROM LAWFUL CUSTODY.
Residence.
Resident at Aden.
RES JUDICATA.
Respondent.
Restitution.
Resulting Trust.
Resumption.
Retrial.
Revenue.
Revenue Court.
Revenue Officer.
Revenue Sale.
REVENUE SALE LAW (ACT XI OF 1859).
Reversionary Interest.
Reversioner.
REVIEW.
Review of Judgment.
Revision.
Revisional Jurisdiction of High Court.
REVIVOR.
Revocation
Rhanderias.
RIGHT OF REPLY.
RIGHT OF SUIT.

Right to Sue.
Road.
Rules of Court.
Ryotwari Landowner.
Ryotwari Lands.
Ryotwari Tenure.

Sadalwar and Mathiri Kasuva.
SALE.
Sale Absolute.
Sale Deed.
SALE FOR ARREARS OF REVENUE.
SALE IN EXECUTION OF DECREE.
Sale of Goods.
Sale of Land.
Sale Proclamation.
Sale with option to Repurchase.
anction for Composition.
SANCTION FOR PROSECUTION.
Sapindas.
SARANJAM.
Satisfaction
Scope of Agency.
Sea-customs Act (VIII of 1878)
Search.
SECOND APPEAL.
Second Probate.
Secondary Evidence.
SECRETARY OF STATE FOR INDIA.
Securities.
Security for Costs.
SECURITY FOR GOOD BEHAVIOUR.
SECURITY TO KEEP THE PEACE.
Self-acquisition.
Separation.
Servants' Quarters.
Service Inam.
Service of Notice.
Set-off.
SETTLEMENT BY HINDU WOMAN ON TRUSTS.
Settlement Officer.
Shares.
Shipping Orders.
SIMANADARS.
Simple Mortgage.
Single Judge.
Sir Lands.
Solicitors' Lien for Costs.
Sovereign Right.
SPECIAL CONSTABLES.
Special Tribunal.
SPECIFIC MOVEABLE PROPERTY.
SPECIFIC PERFORMANCE.
SPECIFIC RELIEF ACT (I OF 1877).
Spiritual Welfare.
Stables.
Stamp.
STAMP ACT (II OF 1899).
Stamp Duty.
Stani Karnavan.
Statement.
STATUTE.
STAY OF CRIMINAL PROCEEDINGS.
Stay of Execution.
Stay of Proceedings.
STAY OF SUIT.
Stoppage in Transit.
Straits Settlements Ordinance (III of 1893).
Straits Settlements Ordinance (VI of 1896).
Straits Settlements Ordinance (XXXI of 1907).
Stridhan.
Subordinate Court.
Subordinate Judge.
SUBROGATION.
Substituted Service.
SUBSTITUTION OF PROPERTY AND SECURITY.
SUCCESSION.
SUCCESSION ACT (X OF 1865).
SUCCESSION CERTIFICATE.
SUCCESSION CERTIFICATE ACT (VII OF 1889).
Succession Duty.
Sudras.
Suit.
SUIT FOR CANCELLATION OF DOCUMENT.
SUIT TO SET ASIDE DECREE.
Suits Valuation Act (VII of 1887).
Summary Trial.
Summons Case.
SUMMONS, SERVICE OF.
SURETY.
Surprise.
Surrender.
Survey Maps.

Tagavi Advance.
Taluqdar.

Tarwad Property.
Taxation.
Taxation of Costs.
Temple.
Temple Committee.
TEMPORARY INJUNCTION.
Tenancy-in-Common.
Tenant.
TENANTS-IN-COMMON.
Testator.
THAK MAP.
Theft.
Threatening Letter to Court.
Thumb Impressions.
Time.
Time-limit.
TITLE.
Title Deeds.
Title Paramount.
TORT.
Trading with the Enemy.
Trafficking in Offices.
Transfer.
Transfer of Decree.
Transfer of Goods.
Transfer of Management.
Transfer of Proceedings.
TRANSFER OF PROPERTY ACT (IV OF 1882).
Transfer of Shares.
Transferability.
Transferee.
TRESPASS.
Trespasser.
Trial.
Trust.
TRUSTEE.
Trustees Act (XV of 1866).
Trustees, *de facto*.
TRUSTEES OF A TEMPLE.
Trusts Act (II of 1882).

Ultra Vires Rules.
Unauthorised Act.
Unconscionable Interest.
Undefended Suit.
Under-Raiyat.
U. P. and Oudh Acts.
U. P. LAND REVENUE ACT (III OF 1901).
Unliquidated Damages.
UNPROFESSIONAL CONDUCT.
Usufructuary Mortgage.

VAKALATNAMA.
Valuable Consideration.
Valuation.
Valuation of Appeal.
VALUATION OF SUIT.
VATANDAR JOSHI.
VENDOR AND PURCHASER.
Vendor's Lien.
Verification.
Verification of Plaint.
Village.
Village Magistrate.
Voluntary Liquidation.
Vyavahara Mayukha.

Waiver.
Wajib-ul-arz.
WAKF.
WAKF, VALIDITY OF.
Waqf.
War.
Warrant.
Warrant Case.
Warrant of Arrest.
WASTE LANDS.
Waste Lands Act (XXIII of 1863).
Watan.
Water-cess.
WAY.
Weekly Sitting List.
Widow.
WILL.
1. CONSTRUCTION.
2. DEMONSTRATIVE LEGACY.
3. PROOF.
Winding-up.
Witness.
Words and Phrases.
WRITTEN STATEMENT.

Yajman.

Zamindar.
Zamindari.
Zamindari Lands.

TABLE

OF

CASES IN THE DIGEST.

Name of Case.	Volume and Page.	Column of Digest.
A		
Abdul Ali Chowdhury *v.* Emperor	I. L. R. 43 Calc. 671; 20 C. W. N. 197	380
Abdul Aziz Bepari *v.* Jogendra Krishna Ray	20 C. W. N. 1224	104
Abdul Gani *v.* Raja Ram	20 C. W. N. 829	71
Abdul Ghafoor Mian *v.* Altaf Hosain	20 C. W. N. 605	271
Abdul Kadir *v.* King-Emperor	20 C. W. N. 1267	309
Abdul Karim *v.* Islamunnissa Bibi	I. L. R. 38 All. 339	252
Abdul Quader *v.* Fritz Kapp	I. L. R. 43 Calc. 1140; 20 C. W. N. 691	12
Abdul Rahman *v.* Sarafat Ali	20 C. W. N. 667	369
Abdul Rahman Chowdhuri *v.* Ahmadar Rahman	I. L. R. 43 Calc. 558	212
Abdul Rahiman *v.* Gustadji Muncherji Cooper	20 C. W. N. 297	313
Abdullabhai Lalljee *v.* The Executive Committee, Aden	I. L. R. 40 Bom. 446	7
Abdur Rahaman Sarkar *v.* Promode Behary Dutt	20 C. W. N. 40	70
Abdurahim, Haji Ismail Mithu *v.* Halimabai.	L. R. 43 I. A. 35; 20 C. W. N. 362	394
Abhuram Sil *v.* Hara Chandra Das	20 C. W. N. 1231	153
Abibulla Ravuthan, *Re*	I. L. R. 39 Mad. 770	123
Abid Ali *v.* Imam Ali	I. L. R. 38 All. 92	280
Abjal Majhi *v.* Intoo Bepari	20 C. W. N. 542	77
Abjan Bibi *v.* Rahman Ali	20 C. W. N. 756	27
Abraham Servai *v.* Raphial Muthirian	I. L. R. 39 Mad. 288	242
Abu Muhammad Mian *v.* Muckut Pertap Narain	20 C. W. N. 860	319
Achratlal Jekisandas *v.* Chimanlal Parbhudas	I. L. R. 40 Bom. 600	178
Achut Rayapa *v.* Gopal Subbaya	I. L. R. 40 Bom. 22	249
Achyutananda Das *v.* Jagannath Das	20 C. W. N. 122	196
Administrator-General of Bengal *v.* A. D. Christiana	I. L. R. 43 Calc. 201	431
Adwaitya Prasad *v.* Baldeo Dass	20 C. W. N. 650	183
Ahamadulla Chowdry *v.* Prayag Sahu	20 C. W. N. 39	31
Ahmad Raza *v.* Abid Husain	I. L. R. 38 All. 494; L. R. 43 I. A. 264	155
Akahoy Chandra Majhi *v.* Manmatha Nath Chatterjee	20 C. W. N. 1345	349
Akimunnessa Bibi *v.* Bepin Behary Mitter	20 C. W. N. 544	76
Akloo *v.* Sheikh Emanon	20 C. W. N. 1005	414
Akshoy Singh *v.* Rameswar Bagdi	I. L. R. 43 Calc. 1143; 20 C. W. N. 1071	133

Name of Case.	Volume and Page.	Column of Digest.
Alexander *v.* Connors	20 C. W. N. 698	172
Ali Husain *v.* Hakim-ullah	I. L. R. 38 All. 230	88
Ali Mahamud *v.* Aftahuddin Bhuya	20 C. W. N. 355	26
Ambica Prasad Singh *v.* Baldeo Lal	20 C. W. N. 1113	228
Amrita Lal Kundu *v.* Anukul Chandra Das	I. L. R. 43 Calc. 586; 20 C. W. N. 358	255
Ananda Kumar Bhattacharjee *v.* Secretary of State for India	I. L. R. 43 Calc. 973; 20 C. W. N. 576	19
Ananda Kumari Debi *v.* Durga Mohan Chuckerbutty	20 C. W. N. 31	113
Ananda Mohan Saha *v.* Gobinda Chandra Ray Choudhury	20 C. W. N. 322	414
Anilabala Dasi *v.* Rajendra Nath Dalal	I. L. R. 43 Calc. 300	216
Annamalai Chetty *v.* Velayuda Nadar	I. L. R. 39 Mad. 129	247
Annavi Muthiriyan, *Re*	I. L. R. 39 Mad. 449	158
Appadu *v.* Appamma	I. L. R. 39 Mad. 472	130
Appayya Shetty *v.* Mahammad Beari	I. L. R. 39 Mad. 834	228
Arfan Ali *v.* King-Emperor	20 C. W. N. 1270	308
Arindra Rajbunsi *v.* King-Emperor	20 C. W. N. 1296	127
Arjun Ramji *v.* Ramabai	I. L. R. 40 Bom. 564	242
Arunachellam Chettiar *v.* Lakshmana Ayyar	I. L. R. 39 Mad. 936	244
Arunachellam Chetty *v.* Ramaswami Chetty	20 C. W. N. 673	433
Asadali Chowdhury *v.* Mahomed Hossain Chowdhury	I. L. R. 43 Calc. 986; 20 C. W. N. 1009	83
Ashmatulla Sarkar *v.* Ran Mahmud Chowdhury	20 C. W. N. 874	51
Asita Mohon Ghosh *v.* Nirode Mohon Ghosh	20 C. W. N. 901	183, 197
Assistant Collector of Kaira *v.* Vithaldas	I. L. R. 40 Bom. 254	227
Atchayya *v.* Seetharamachandra	I. L. R. 39 Mad. 195	60
Atimannessa Bibi *v.* Abdul Sobhan	I. L. R. 43 Calc. 467; 20 C. W. N. 113	427
Atrabannessa Bibi *v.* Safatullah Mia	I. L. R. 43 Calc. 504	23
Atul Chandra Sen *v.* Peary Mohan Mookerjee	20 C. W. N. 669	74
Atul Hazra *v.* Uma Charan Chongdar	20 C. W. N. 796	116
Audiappa *v.* Nallendrani	I. L. R. 39 Mad. 473	178
Ayyakutti Markondan *v.* Periyasami Kavundan	I. L. R. 39 Mad. 579	413

B

Babua *v.* Sarli	20 C. W. N. 1352	30
Bai Atrani *v.* Deepsing Baria Thakor	I. L. R. 40 Bom. 86	59
Bai Bhicaiji *v.* Perojshaw Jivanji	I. L. R. 40 Bom. 401	292
Bai Diwali *v.* Umedbhai Bhulabhai	I. L. R. 40 Bom. 614	46
Baijnath Prasad Singh *v.* Tej Bali Singh	I. L. R. 38 All. 590	189
Baijnath Marwari *v.* W. S. Street	20 C. W. N. 518	117
Baijnath Rai *v.* Dharam Deo Tiwari	I. L. R. 38 All. 315	176
Baiznath Lala *v.* Ramadoss	I. L. R. 39 Mad. 62	247
Bajrangi Lal *v.* Ghura Rai	I. L. R. 38 All. 232	397
Balia Koer *v.* Bandram Sahu	20 C. W. N. 823	350
Balkrishna Rao *v.* The Secretary of State for India	I. L. R. 39 Mad. 494	262
Balmukund Ruyia *v.* Motilal Barman	20 C. W. N. 359	283
Bamandas Bhattacharyya *v.* Nilmadhab Saha	20 C. W. N. 1340	27, 153

Name of Case.	Volume and Page.	Column of Digest.
Bank of Bengal *v.* Ramanathan Chetty	I. L. R. 43 Calc. 527; L. R. 43 I. A. 48; 20 C. W. N. 329	332
Bans Gopal *v.* Sheo Ram Singh	I. L. R. 38 All. 97	279
Bansiram *v.* Panchami Dasi	20 C. W. N. 638	171, 343
Bapu *v.* Bapu	I. L. R. 39 Mad. 750	374
Bapu *v.* Bapu	I. L. R. 39 Mad. 768	120
Bapuji Jagannath *v.* Govindlal Kasandas	I. L. R. 40 Bom. 439	54
Barati Lal *v.* Salik Ram	I. L. R. 38 All. 107	406
Basdeo Rai *v.* Dwarka Ram	I. L. R. 38 All. 178	414
Basir Ali *v.* Hafiz Nazir Ali	I. L. R. 43 Calc. 124	347
Bayabai Sakalkar *v.* Haridas Ranchhordas	I. L. R. 40 Bom. 1	430
Bayan Ali *v.* King-Emperor	20 C. W. N. 1209	122
Bejoy Gopal Ghosh *v.* Kamal Mondal	20 C. W. N. 1300	114
Beni Prasad *v.* Lajja Ram	I. L. R. 38 All. 452	276
Besant, Mrs., *In re*	I. L. R. 39 Mad. 1164	327
Besant, Mrs. *v.* Emperor	I. L. R. 39 Mad. 1085	330
Bhabatarini Debi *v.* Hari Charan Banerjee	20 C. W. N. 787	112
Bhagat Mal Sahu *v.* Abdul Karim	20 C. W. N. 797	191
Bhaiganta Bewah *v.* Himmat Badyakar	20 C. W. N. 1335	160
Bhairon Prasad *v.* Amina Begam	I. L. R. 38 All. 690	341
Bharat Mahto *v.* Nisarali Sheikh	20 C. W. N. 1020	387
Bhaskar Gopal *v.* Padman Hira	I. L. R. 40 Bom. 313	409
Bhawan *v.* Madan Mohan Lal	I. L. R. 38 All. 533	11
Bhikariram Bhagat *v.* Maharaj Bahadur Singh	I. L. R. 43 Calc. 195	294
Bhoj Raj *v.* Ram Narain	I. L. R. 38 All. 530	318
Bhuban Behary Nag *v.* Dhirendra Nath Banerji	20 C. W. N. 1203	64
Bhupendra Krishna Ghose *v.* Amarendra Nath Dey	I. L. R. 43 Calc. 432; L. R. 43 I. A. 12; 20 C. W. N. 169	203
Bhupendra Kumar Chakravarty *v.* Purna Chandra Bose	I. L. R. 43 Calc. 650	222
Bhupendra Nath Bhose *v.* E. D. Sassoon & Co.	I. L. R. 43 Calc. 932	21
Bhuta Santal *v.* Dama Santal	20 C. W. N. 62	119
Bilasiram Thakurdas *v.* Gubbay	I. L. R. 43 Calc. 305; 20 C. W. N. 240	371
Bindeshri Prasad *v.* Lekhraj Sahu	20 C. W. N. 760	289, 389
Birendra Kishore Manikya *v.* Kalitara Debi	I. L. R. 43 Calc. 547; 20 C. W. N. 275	28
Bisheshar Ahir *v.* Dukharan Ahir	I. L. R. 38 All. 197	9
Bisheshur Chuckerbutty *v.* The Emperor	20 C. W. N. 758	116
Bishun Narain Dass *v.* Chandra Kanta Naik	20 C. W. N. 1240	420
Boggiano & Co. *v.* The Arab Steamers Co., Ltd.	I. L. R. 40 Bom. 529	99
Bombay Corporation *v.* G. I. P. Railway Co.	L. R. 43 I. A. 310	344
Brahmadat Tewari *v.* Chaudan Bibi	20 C. W. N. 192	431
Brij Behari Lal *v.* Shivanath Prasad	20 C. W. N. 1354	54
Brojendra Kishore Roy Chowdhury *v.* Sarojini Ray	20 C. W. N. 481	117, 250
Brojendra Kumar Das *v.* Gobinda Mohan Das	20 C. W. N. 752	62
Brown *v.* Ananda Lal Mullik	20 C. W. N. 1347	120
Buddha Singh *v.* Laltu Singh	I. L. R. 37 All. 604; 20 C. W. N. 1	172
Budhu Lal *v.* Chattu Gope	I. L. R. 43 Calc. 597	373

Name of Case.	Volume and Page.	Column of Digest.
C		
Causley *v.* Emperor	I. L. R. 43 Calc. 421 ; 20 C. W. N. 326	170
Chairman, Howrah Municipality *v.* Haridas Datta	I. L. R. 43 Calc. 130 ; 20 C. W. N. 613	287
Chakkra Kannan *v.* Kunhi Pokker	I. L. R. 39 Mad. 317	272
Chandra Kanta Chakrabarti *v.* Ramkrishna Mahalanabis	20 C. W. N. 1002.	26
Chandra Kanta Kanjilal *v.* King-Emperor	20 C. W. N. 981	306
Chandrika Bakhsh Singh *v.* Indar Bikram Singh	I. L. R. 38 All. 440 ; L. R. 43 I. A. 179 ; 20 C. W. N. 1149	403
Chantan *v.* Mathu	I. L. R. 39 Mad. 957	130
Charamudi *v.* Raghavulu	I. L. R. 39 Mad. 462	408
Charu Chandra Majumdar, *In the matter of*	20 C. W. N. 1233	131
Chattar Singh *v.* Amir Singh	I. L. R. 38 All. 204	66
Chatterjee Brahmin *v.* Durgadutt Agarwalla	20 C. W. N. 943	141
Chellapalli, Zamindar of *v.* Somaya	I. L. R. 39 Mad. 341	258
Chellaphroo Chowdhuri *v.* Banga Behari Sen	20 C. W. N. 408	92, 103, 249
Chhita Bhula *v.* Bai Jamni	I. L. R. 40 Bom. 483	143
Chhotey Lal *v.* Lakhmi Chand Magan Lal	I. L. R. 38 All. 425	340
Chidambara Mudaliar *v.* Krishnasami Pillai	I. L. R. 39 Mad. 365	206
Chidambaramma *v.* Hussainamma	I. L. R. 39 Mad. 565	201
Chutterput Singh *v.* Sait Sumari Mull	I. L. R. 43 Calc. 903 ; 20 C. W. N. 889	361
Crown Prosecutor, The *v.* Ganapathy Iyer	I. L. R. 39 Mad. 362	256
Crown Prosecutor, The *v.* Govindarajulu	I. L. R. 39 Mad. 886	257
D		
Dalchand Singhi *v.* The Secretary of State for India	I. L. R. 43 Calc. 665	225
Damodar Shanbogue *v.* Rama Row	I. L. R. 39 Mad. 101	322
Damoo Sahu *v.* Jitan Dusadh	20 C. W. N. 862	122
Dattatraya Sakharam *v.* Govind Sambhaji	I. L. R. 40 Bom. 429	181
Debendra Nath Das *v.* Bibudhendra Mansingh	I. L. R. 43 Calc. 90	237
Debendra Nath Haldar *v.* Bireshwar Haldar	20 C. W. N. 648	156
Debi Bakhsh Singh *v.* Shadi Lal	I. L. R. 38 All. 271 ; L. R. 43 I. A. 69 ; 20 C. W. N. 770	297
Debi Charan Lal *v.* Sheikh Mehdi Hussain	20 C. W. N. 1303	238, 243
Debi Mahto *v.* King-Emperor	20 C. W. N. 1116	130, 391
Deputy Legal Remembrancer, Bihar and Orissa *v.* Matukdhari Singh	20 C. W. N. 128	125, 304, 309, 436
Desikachari, *Re*	I. L. R. 39 Mad. 539	236
Desraj *v.* Sagar Mal	I. L. R. 38 All. 37	339
Dhanraj Singh *v.* Lakhrani Kunwar	I. L. R. 38 All. 509	142
Dharmalinga Mudly, *In re*	I. L. R. 39 Mad. 57	305
Dharmaraja Ayyar *v.* Srinivassa Mudaliar	I. L. R. 39 Mad. 876	75
Digbijai Singh *v.* Hira Devi	I. L. R. 38 All. 322	10
Dina Nath Nag *v.* Sashi Mohan Dey	20 C. W. N. 550	31

Name of Case.	Volume and Page.	Column of Digest.
District Judge of Kistna, The *v.* Hanumanulu	I. L. R. 39 Mad. 1045	235
Dujai *v.* Shiam Lal	I. L. R. 38 All. 122	376
Durga Charan Chander *v.* Kharda Company Ld.	20 C. W. N. 254	367
Dwarka Nath Chowdhuri *v.* Tafazar Rahman	20 C. W. N. 1097	32
Dwarkadas Damodar *v.* Dwarkadas Shamji	I. L. R. 40 Bom. 341	381
Dwarkadas Tejbhandas, *In re*	I. L. R. 40 Bom. 235	323
Dwijapada Karmakar *v.* Miss Baileau	20 C. W. N. 608	188
E		
East Indian Railway Co. *v.* Ram Auter	20 C. W. N. 696	346
Eastern Mortgage and Agency Co., Ld. *v.* Premananda Saha	20 C. W. N. 789	347
Eastern Trust Co. *v.* McKenzie Mann & Co.	20 C. W. N. 457	401
Easwara Ayyar *v.* Govindarajulu Nayudu	I. L. R. 39 Mad. 689	324
Emperor *v.* A Deaf and Dumb Accused	I. L. R. 40 Bom. 598	123
Emperor *v.* Abdur Rahman	I. L. R. 38 All. 664	308
Emperor *v.* Aijaz Husain	I. L. R. 38 All. 506	307
Emperor *v.* Bechan Pande	I. L. R. 38 All. 457	217
Emperor *v.* Bechur Anop	I. L. R. 40 Bom. 105	304
Emperor *v.* Bhawani Dat	I. L. R. 38 All. 276	310
Emperor *v.* Bhawani Das	I. L. R. 38 All. 169	120
Emperor *v.* Bhima	I. L. R. 38 All. 311	121
Emperor *v.* Bhole Singh	I. L. R. 38 All. 32	114
Emperor *v.* Brikhbhan Singh	I. L. R. 38 All. 14	118
Emperor *v.* Dhani Ram	I. L. R. 38 All. 49	292
Emperor *v.* Donaldson	I. L. R. 43 Calc. 542	311
Emperor *v.* Durga Halwai	I. L. R. 43 Calc. 153	378
Emperor *v.* Fakira Appaya	I. L. R. 40 Bom. 220	317
Emperor *v.* Gaya Bhar	I. L. R. 38 All. 517	309
Emperor *v.* Ghamman	I. L. R. 38 All. 455	290
Emperor *v.* Gobind Sahai	I. L. R. 38 All. 134	124
Emperor *v.* Husain Khan	I. L. R. 38 All. 354	350
Emperor *v.* Jawahir Thakur	I. L. R. 38 All. 430	303
Emperor *v.* Jivram Dankarji	I. L. R. 40 Bom. 97	125
Emperor *v.* Kalka Prasad	I. L. R. 38 All. 42	121
Emperor *v.* Kashi Shukul	I. L. R. 38 All. 695	130
Emperor *v.* Lal Bihari	I. L. R. 38 All. 393	115
Emperor *v.* Lal Singh	I. L. R. 38 All. 395	125
Emperor *v.* Manilal Mangalji	I. L. R. 40 Bom. 263	35
Emperor *v.* Mian Din	I. L. R. 38 All. 47	341
Emperor *v.* Murli Dhar	I. L. R. 38 All. 284	307
Emperor *v.* Ram Dayal	I. L. R. 38 All. 40	10
Emperor *v.* Rustam	I. L. R. 38 All. 29	131
Emperor *v.* Shambhu Nath	I. L. R. 38 All. 468	380
Emperor *v.* Sheikh Abdul	I. L. R. 43 Calc. 1128 ; 20 C. W. N. 725	379
Emperor *v.* Sreenath Mahapatra	I. L. R. 43 Calc. 426 ; 20 C. W. N. 976	361

Name of Case.	Volume and Page.	Column of Digest.
Errikulappa Chetty *v.* The Official Assignee, Madras	I. L. R. 39 Mad. 903	75
Eusuffzeman Sarkar *v.* Sanchia Lal Nahata	I. L. R. 43 Calc. 207	164
F		
Fakirchand Lallubhai *v.* Naginchand Kalidas	I. L. R. 40 Bom. 210	47
Fateh Chand *v.* Rup Chand	I. L. R. 38 All. 446; L. R. 43 I. A. 183	205
Fazal Ahmad *v.* Wesal-ud-din	I. L. R. 38 All. 481	69
G		
Gajendra Nath Sahi *v.* Mathura Nath Sahi	20 C. W. N. 876	175
Ganesh Narain Sahi Deo *v.* Protap Udai Nath Sahi Deo	I. L. R. 43 Calc. 136	221
Ganga Dahal Rai *v.* Musammat Gaura	I. L. R. 38 All. 469	73
Ganga Prasad *v.* Har Narain	I. L. R. 38 All. 465	9
Ganga Prasad *v.* Nandu Ram	20 C. W. N. 1080	341
Ganga Singh *v.* Ram Sarup	I. L. R. 38 All. 223	10
Gangabai *v.* Sonabai	I. L. R. 40 Bom. 69	425
Gangabai Peerappa *v.* Bandu	I. L. R. 40 Bom. 369	189
Gangadas Sil *v.* Secretary of State for India in Council	20 C. W. N. 636	289, 313
Gangadhar Bogla *v.* Hira Lal Bogla	I. L. R. 43 Calc. 944; 20 C. W. N. 489	200
Gangadhar Karmakar *v.* Sekhar Basini Dasya	20 C. W. N. 967	30, 243, 359
Gangadhar Pradhan *v.* Emperor.	I. L. R. 43 Calc. 173; 20 C. W. N. 63	166
Gangahari Chakravarti *v.* Nabin Chandra Banikya	20 C. W. N. 232	245
Gangaram *v.* Laxman Ganoba	I. L. R. 40 Bom. 498	407
Ganpat Mahton *v.* Rishal Singh	20 C. W. N. 14	29, 32
Ganpat Rai *v.* Multan	I. L. R. 38 All. 226	160
Gautam Jayachand *v.* Malhari	I. L. R. 40 Bom. 397	143
Genda Kunwar *v.* Harnandan Singh	20 C. W. N. 617	432
Ghuznavi *v.* National Bank of India	20 C. W. N. 562	106
Girija Kanta Chakrabarty *v.* Mohim Chandra Acharjya	20 C. W. N. 675	282
Girja Bai *v.* Sadashiv Dhundiraj	I. L. R. 43 Calc. 1031; L. R. 43 I. A. 151; 20 C. W. N. 1085	192
Gobinda Chandra Basak *v.* Haridas Basak	20 C. W. N. 634	303
Golam Abdin Sarkar *v.* Hem Chandra Majumdar	20 C. W. N. 418	160
Gopal Prosad Bhagat *v.* Rajendra Lal Panja	20 C. W. N. 615	254
Gopeshwar Saha *v.* Jadav Chandra Chanda	I. L. R. 43 Calc. 632; 20 C. W. N. 689	215
Goswami Sri Raman Lalji *v.* Hari Das	I. L. R. 38 All. 474	396
Gour Sundar Bhowmik *v.* Rakhal Raj Bhowmik	20 C. W. N. 1165	79

Name of Case.	Volume and Page.	Column of Digest.
Govindan Nair *v.* Achutha Menon	I. L. R. 39 Mad. 433	405
Gulzari Lal *v.* Latif Husain	I. L. R. 38 All. 181	10
Gur Dayal Singh *v.* Karam Singh	I. L. R. 38 All. 254	410
Gurappa Shivgonappa *v.* Tayawa Shiddappa	I. L. R. 40 Bom. 513	177
H		
Haboo *v.* Kariman	20 C. W. N. 1212	123
Hakeem Patte Muhammad *v.* Shaikh Davood	I. L. R. 39 Mad. 1010	410
Hamira Bibi *v.* Zubaida Bibi	I. L. R. 38 All. 581 ; L. R. 43 I. A. 294	267
Hansa Godhaji *v.* Bhawa Jogaji	I. L. R. 40 Bom. 333	65
Hansman Jha *v.* Bahuji Jha	I. L. R. 43 Calc. 225	424
Hanuman Pershad Thakur *v.* Jadu Nandan Thakur	I. L. R. 43 Calc. 20 ; 20 C. W. N. 147	23
Hanumantha Rao, *Re*	I. L. R. 39 Mad. 414	260
Har Narain *v.* Bishambhar Nath	I. L. R. 38 All. 83	194
Har Prasad *v.* Mukand Lal	I. L. R. 38 All. 70	421
Har Shyam Chowdhuri *v.* Shyam Lal Sahu	I. L. R. 43 Calc. 69 ; 20 C. W. N. 601	393
Hardwari Lal *v.* Salamat-ullah Khan	I. L. R. 38 All. 358	70
Hari Kunwar *v.* Lakhmi Ram Jain	I. L. R. 38 All. 380	56
Harihar Misser *v.* Syed Mohamed	20 C. W. N. 983	247, 303
Harinath Chowdhury *v.* Haradas Acharjya Chowdhury	I. L. R. 43 Calc. 269 ; 20 C. W. N. 188	146
Harkisandas Shivlal *v.* Chhaganlal Narsidas	I. L. R. 40 Bom. 158	62
Hawkins, *Re*	I. L. R. 39 Mad. 686	127
Hemendra Nath Roy *v.* Upendra Narain Roy and Secretary of State for India	I. L. R. 43 Calc. 743 ; 20 C. W. N. 446	147
Himmat Bahadur *v.* Dhanpat Rai	I. L. R. 38 All. 335	166
Hira Lal Pal *v.* Etbar Mandal	20 C. W. N. 43	354
Hiranmoy Kumar Saha *v.* Ramjan Ali Dewan	I. L. R. 43 Calc. 170 ; 20 C. W. N. 48	355
Hughly-Chinsura Municipality *v.* Krista Lal Mullik	20 C. W. N. 824	25
Hussain *v.* Karim	I. L. R. 39 Mad. 544	285
Hyam *v.* Bengal Stone Co., Ld.	20 C. W. N. 368	2
Hyam *v.* Gubbay	20 C. W. N. 66	387
I		
Ibrahim Nachi *v.* Ibrahim Sahib	I. L. R. 39 Mad. 608	177
Imami *v.* Musammat Kallo	I. L. R. 38 All. 433	176
India General S. N. & R. Co., Ld. *v.* Lal Mohan Saha	I. L. R. 43 Calc. 441	312
Indian Specie Bank, Ltd., *In re*	I. L. R. 40 Bom. 134	83
Ismail Allarakhia *v.* Dattatraya	I. L. R. 40 Bom. 638	94

Name of Case.	Volume and Page.	Column of Digest.
J		
Jadubansi Kunwar *v.* Mahpal Singh	I. L. R. 38 All. 111	185
Jagannaikulu *v.* Manager of Nandigam Estate	I. L. R. 39 Mad. 269	263
Jagannath Prasad *v.* U. P. Flour and Oil Mills Company, Ld.	I. L. R. 38 All. 347	84
Jagapatiraju *v.* Sadrusannama Arad	I. L. R. 39 Mad. 795	102
Jagrani *v.* Bisheshar Dube	I. L. R. 38 All. 366	349
Jaharaddi Mandal *v.* Debnath Nath Chaudhury	20 C. W. N. 657	3
Jai Kishan Joshi *v.* Budhanand Joshi	I. L. R. 38 All. 138	251
Jallaldeen Marakayar *v.* Vijayaswami	I. L. R. 39 Mad. 447	257
Jamal *v.* Moolla Dawood, Sons & Co.	I. L. R. 43 Calc. 493 ; L. R. 43 I. A. 6 ; 20 C. W. N. 105	135
Jamna Bai *v.* Vasanta Rao	I. L. R. 39 Mad. 409 ; L. R. 43 I. A. 99 ; 20 C. W. N. 840	44
Jamna Das *v.* Ram Autar Pande	I. L. R. 38 All. 209	281
Jamshed Khodaram *v.* Burjorji Dhunjibhai	I. L. R. 40 Bom. 289 ; L. R. 43 I. A. 26 ; 20 C. W. N. 744	97
Janakbati Thakurain *v.* Gajanand Thakur	20 C. W. N. 986	336
Janaki Ammal *v.* Narayanasami Aiyer.	I. L. R. 39 Mad. 634 ; L. R. 43 I. A. 207 ; 20 C. W. N .1323	198
Janaki Nath Hore *v.* Prabhasini Dasee	I. L. R. 43 Calc. 178	16
Janardan Kishore Lal *v.* Shib Pershad Ram	I. L. R. 43 Calc. 95 ; 20 C. W. N. 475	14
Jatindra Nath Basu *v.* Peyer Deye Debi	I. L. R. 43 Calc. 990 ; L. R. 43 I. A. 108 ; 20 C. W. N. 866	383
Jayawant Jivanrao *v.* Ramchandra Narayan	I. L. R. 40 Bom. 239	352
Jeremiah, *Re*	I. L. R. 39 Mad. 942	154
Jewa Nathoo, *In the matter of*	20 C. W. N. 1327	152
Jhanda Singh *v.* Wahid-ud-din	I. L. R. 38 All. 570 ; L. R. 43 I. A. 284	89
Jhaver Jijibhai *v.* Haribhai Hansji	I. L. R. 40 Bom. 207	33
Jiban Kunwar *v.* Gobind Das	I. L. R. 38 All. 56	390
Jivappa Timmappa *v.* Jeergi Murgeappa	I. L. R. 40 Bom. 551	168
Jnanada Sundari Chowdhurani *v.* Amudi Sarkar	I. L. R. 43 Calc. 603 ; 20 C. W. N. 428	376
Jogendra Chandra Banerjee *v.* Phani Bhusan Mookerjee	I. L. R. 43 Calc. 64	199
Jogendra Nath Dey *v.* Gour Singh Mura	20 C. W. N. 582	40
Jogesh Chandra Gupta, *In the matter of*	20 C. W. N. 283	423
Johur Lal Dey *v.* Dhirendra Nath Dey	20 C. W. N. 304	395
Joseph *v.* Calcutta Corporation	L. R. 43 I. A. 243	287
Jotiram Khan *v.* Jonaki Nath Ghose	20 C. W. N. 258	25, 289, 391
Joy Lall & Co. *v.* Monmotha Nath Mullik	20 C. W. N. 365	18
Jugal Chandra Mazumdar, *In the matter of*	20 C. W. N. 1016	233
K		
Kailash Chandra Saha *v.* Darbaria Sheikh	20 C. W. N. 347	230
Kali Charan Nath *v.* Sukhoda Sundari Debi	20 C. W. N. 58	49

Name of Case.	Volume and Page.	Column of Digest.
Kali Kanta Saha *v.* Ismail	20 C. W. N. 159	367
Kali Kumar Chuckerbutty *v.* Aslam	20 C. W. N. 163	64
Kali Prasanna Sil *v.* Punchanan Nandi Chowdhury	20 C. W. N. 1000	71
Kalianji *v.* The Bank of Madras	I. L. R. 39 Mad. 695	339
Kalidasi Dassee *v.* Nobo Kumari Dassee	20 C. W. N. 929	385
Kalka Prasad *v.* Manmohan Lal	I. L. R. 38 All. 302	421
Kanhaiya Lal *v.* Kishori Lal	I. L. R. 38 All. 679	202
Kanni Rowther *v.* Inayathalla Sahib	I. L. R. 39 Mad. 946	124
Karali Prasad Guru *v.* King-Emperor	20 C. W. N. 1075	310
Karam Ilahi *v.* Sharf-ud-din	I. L. R. 38 All. 212	415
Karl Ettlinger *v.* Chagandas & Co.	I. L. R. 40 Bom. 301	98
Kartick Chandra Das *v.* Satya Nidhi Ghosal	20 C. W. N. 584	355
Kartick Chandra Mondal *v.* Nilmani Mondal	20 C. W. N. 686	253
Kartik Mandal *v.* Bama Charan Mandal	20 C. W. N. 182	28
Karunakara *v.* Krishna	I. L. R. 39 Mad. 429	70
Karvetnagar, Rajah of *v.* Venkata Reddi	I. L. R. 39 Mad. 570	50
Kashi Nath Pal *v.* Jagat Kishore Acharya Chowdhury	20 C. W. N. 643	156, 158
Kashibai *v.* Tatya	I. L. R. 40 Bom. 668	181
Kashinath Krishna *v.* Dhondshet	I. L. R. 40 Bom. 675	357
Kashinath Vinayak *v.* Rama Daji	I. L. R. 40 Bom. 492	144
Kassim Ebrahim Saleji *v.* Johurmull Khemka	I. L. R. 43 Calc. 447 ; 20 C. W. N. 173	398
Kasturchand Lakhmaji *v.* Jakhia Padia	I. L. R. 40 Bom. 74	87
Kasturi *v.* Panna Lal	I. L. R. 38 All. 520	193
Kavasji Sorabji *v.* Bai Dinbai	I. L. R. 40 Bom. 666	336
Kedar Nath Banerjee *v.* Hari Das Ghose	I. L. R. 43 Calc. 1	200
Ketokey Churan Banerjee *v.* Sarat Kumari Dabee.	20 C. W. N. 995	20, 324
Khagendra Nath Chatterjee *v.* Sonatan Guha	20 C. W. N. 149	92
Khatibannessa Bibi *v.* Sanchia Lal Nahata	20 C. W. N. 272	66
Khemesh Chandra Rakshit *v.* Abdul Hamid Sikdar	I. L. R. 43 Calc. 46	368
Khetra *v.* Mumtaz Begam	I. L. R. 38 All. 72	69
Khetra Mohan Giri, *In the matter of*	I. L. R. 43 Calc. 1029 ; 20 C. W. N. 1170	132
Kheyali Prosad *v.* Nazarul Alum	20 C. W. N. 1048	318
Khiali Ram *v.* Taik Ram	I. L. R. 38 All. 540	281
Khirode Chandra Roy *v.* Ashtullabu	20 C. W. N. 845	172
Khub Lal Singh *v.* Ajodhya Misser	I. L. R. 43 Calc. 574	185
Khurshed Ali *v.* Abdul Majid	I. L. R. 38 All. 361	319
King-Emperor *v.* Aushi Bibi	20 C. W. N. 512	224
King-Emperor *v.* Monmohan Roy	20 C. W. N. 292	304
King-Emperor *v.* Nanda Gopal Roy	20 C. W. N. 1128	129
Kishan Lal *v.* Sultan Singh	I. L. R. 38 All. 5	65
Kissory Mohan Roy, *In re*	20 C. W. N. 1155	324
Krishna Chandra Bagdi *v.* Satish Chandra Banerji	20 C. W. N. 872	33
Krishna Chandra Choudhury *v.* Ratan Ram Pal	20 C. W. N. 645	189
Krishna Chettiar *v.* Nagamani Ammal	I. L. R. 39 Mad. 915	337
Krishna Dayal Gir *v.* Sakina Bibi	20 C. W. N. 952	51
Krishna Govinda Pal *v.* Emperor	I. L. R. 43 Calc. 783 ; 20 C. W. N. 262	170

Name of Case.	Volume and Page.	Column of Digest.
Krishna Kalyani Dasi *v.* R. Braunfeld.	20 C. W. N. 1028	225, 358, 402
Krishna Prasad *v.* Rampershad Singh	20 C. W. N. 508	190
Krishna Sahay *v.* Palakdhari Rout	20 C. W. N. 1157	26
Krishnamachari *v.* Shaw Wallace & Co.	I. L. R. 39 Mad. 576	118
Krishnan Kidavu *v.* Raman	I. L. R. 39 Mad. 918	272
Krishnaswami Naidu *v.* Seethalakshmi Ammal	I. L. R. 39 Mad. 1029	187
Kumar Krishna Dutt *v.* Hari Narain Ganguly	I. L. R. 43 Calc. 676 ; 20 C. W. N. 537	109
Kunja Kishore Pal Chowdhury *v.* Bama Sundari Dassee	I. L. R. 43 Calc. 878	230
Kunjamani Dassi *v.* Nikunja Bihari Das	20 C. W. N. 314	198
Kunwar Sen *v.* Darbari Lal	I. L. R. 38 All. 411	280
Kuppuswami Aiyar, *Re*	I. L. R. 39 Mad. 561	128
Kusodhaj Bhukta *v.* Braja Mohan Bhukta	I. L. R. 43 Calc. 217	277

L

Lachmi Narain *v.* Darbari Lal	I. L. R. 38 All. 357	64
Lachmi Narain Prasad *v.* Kishan Kishore Chand	I. L. R. 38 All. 126	192
Lakhi Priya Dasi *v.* Rai Kissori Dassi	20 C. W. N. 554	325
Lakhipriya Dasi *v.* Raikishori Dasi	I. L. R. 43 Calc. 243 ; 20 C. W. N. 140	213
Lakshmi Achi *v.* Subbarama Ayyar	I. L. R. 39 Mad. 488	50
Lalit Kishore Mitra *v.* Thakur Girdhari Singh	20 C. W. N. 1306	300
Laljee Mahomed *v.* Guzdar	I. L. R. 43 Calc. 833 ; 20 C. W. N. 335	15
Lalu Dome *v.* Bejoy Chand Mahatap	I. L. R. 43 Calc. 227 ; 20 C. W. N. 404	381
Lani Mia *v.* Easin Mea	20 C. W. N. 948	27
Latif Hussain *v.* Basdeo Singh	20 C. W. N. 1177	300
Laxman Nilkant *v.* Vinayak Keshav	I. L. R. 40 Bom. 329	185
Ledu Coachman *v.* Hiralal Bose	I. L. R. 43 Calc. 115	91
Lenga Lalung *v.* Penguri Lalungni	20 C. W. N. 406	134
Linotype and Machinery, Ld., *In the matter of*	20 C. W. N. 1252	390
Loke Nath Singh *v.* Dhakeshwar Prosad Narain Singh	20 C. W. N. 51	298, 299
Lokenath Singh *v.* Guju Singh	20 C. W. N. 178	254

M

McGowan *v.* McGowan	I. L. R. 38 All. 688	149
Madan Mohun Nath Sahi Deo *v.* Pratap Udai Nath Sahi Deo	20 C. W. N. 111	41
Madappa Ganappa *v.* Jaki Ghosal	I. L. R. 40 Bom. 60	67
Madar *v.* Kader Moideen	I. L. R. 39 Mad. 54	219
Madhavrao Hariharrao *v.* Anusuyabai	I. L. R. 40 Bom. 606	375
Madho Ram *v.* Nihal Singh	I. L. R. 38 All. 21	75
Madhumala Dassi *v.* Lakshan Chandra Pal	20 C. W. N. 627	199
Madhusudan Sen *v.* Rakhal Chandra Das Basak	I. L. R. 43 Calc. 248	334

Name of Case.	Volume and Page.	Column of Digest.
Mahabarsha Bankapore *v.* Secretary of State for India	20 C. W. N. 685	346
Mahabir Prasad *v.* Masiat-ullah	I. L. R. 38 All. 103	159
Mahabir Singh *v.* Bhagwanti	I. L. R. 38 All. 325	9
Mahabir Thakur *v.* King-Emperor	20 C. W. N. 520	306
Mahadeo Prasad *v.* Jagar Deo Gir	I. L. R. 38 All. 260	320
Mahadeo Rangnath *v.* Rama Tukaram	I. L. R. 40 Bom. 194	145
Mahammad Ismail *v.* Samad Ali Bhuiyan	20 C. W. N. 946	11
Maharaja of Bobbili *v.* Narasaraju Bahadur	I. L. R. 39 Mad. 640 ; L. R. 43 I. A. 238	252
Maharaja of Bobbili *v.* Venkataramanjulu Naidu	I. L. R. 39 Mad. 265	189
Mahesh Chandra Addy *v.* Panchu Mudali	I. L. R. 43 Calc. 884 ; 20 C. W. N. 287	424
Mahomed Beg Amin *v.* Narayan Meghaji	I. L. R. 40 Bom. 358	321
Mahomed Bukth Majumdar *v.* Dewan Ajman Reja	I. L. R. 43 Calc. 158	427
Mahomed Haji Essack *v.* Shaik Abdool Rahiman	I. L. R. 40 Bom. 461	323
Mahomed Ismail Ariff *v.* Ahmed Moolla Dawood	I. L. R. 43 Calc. 1085 ; L. R. 43 I. A. 127 ; 20 C. W. N. 1118	268
Mahomed Kazi *v.* King-Emperor	20 C. W. N. 1206	295
Mahomed Syedol Ariffin *v.* Yeoh Ooi Gark	L. R. 43 I. A. 256	154
Majidmian Banumiyan *v.* Bibisaheb Jan	I. L. R. 40 Bom. 34	266
Mammali *v.* Kutti Ammu	I. L. R. 39 Mad. 543	305
Manchharam *v.* Panabhai Lallubhai	I. L. R. 40 Bom. 51	248
Mani Mohan Mandal *v.* Ramtaran Mandal	I. L. R. 43 Calc. 148	353
Manilal Gangadas *v.* Secretary of State for India	I. L. R. 40 Bom. 166	35
Manindra Chandra Nandi *v.* Durga Sundari Dassya	20 C. W. N. 680	159
Manjappa Ajri *v.* Marudevi Hengsu	I. L. R. 39 Mad. 12	12
Manmotha Nath Chatterjee *v.* Ganga Gir Gossain	20 C. W. N. 978	117
Manners *v.* Satroghan Das	20 C. W. N. 800	26
Maqbul Fatima *v.* Amir Hasan Khan	20 C. W. N. 1213	168
Mathura Mohan Saha *v.* Nabin Chandra Dutt	20 C. W. N. 749	370
Mathura Mohan Saha *v.* Ram Kumar Saha	I. L. R. 43 Calc. 790 ; 20 C. W. N. 370	366
Mathura Sundari Dasi *v.* Haran Chandra Saha	I. L. R. 43 Calc. 857 ; 20 C. W. N. 594	15
Meajan Matabor *v.* Alimuddin Mean	20 C. W. N. 1217	157
Mercantile Bank of India, Ltd. *v.* The Official Assignee, Madras	I. L. R. 39 Mad. 250	325
Meyappa Chetty *v.* Supramanian Chetty	L. R. 43 I. A. 113 ; 20 C. W. N. 833.	239
Michael Pillai *v.* Rt. Rev. Bartle	I. L. R. 39 Mad. 1056	42
Mohammed Kazi *v.* Emperor	I. L. R. 43 Calc. 1161 ; 20 C. W. N. 1294	356
Mohanlal Nagji *v.* Bai Kashi	I. L. R. 40 Bom. 477	57
Mohini Mohan Majumdar *v.* Surendra Chandra Dey	20 C. W. N. 679	50
Mool Chand *v.* Alwar Chetty	I. L. R. 39 Mad. 548	218
Mota Holiappa *v.* Vithal Gopal	I. L. R. 40 Bom. 662	47
Motilal Poddar *v.* Judhistir Das Teor	20 C. W. N. 310	314
Muhammad Abdul Jalil *v.* Ram Dayal	I. L. R. 38 All. 484	108
Muhammad Ali *v.* Baldeo Pande	I. L. R. 38 All. 148	280

Name of Case.	Volume and Page.	Column of Digest.
Muhammad Khalil *v.* Muhammad Ibrahim	I. L. R. 38 All. 201	317
Muhammad Mahbub Ali Khan *v.* Raghubar Dayal	I. L. R. 38 All. 27	317
Muhammad Siddiq *v.* Mahmud-un-nissa Bibi	I. L. R. 38 All. 191	76
Mukta Prasad *v.* Mahadeo Prasad	I. L. R. 38 All. 327	60
Mukunchand Rajaram *v.* Nihalchand Gurmukhrai	I. L. R. 40 Bom. 517	95
Mukunda Lal Chackravarti *v.* Jogesh Chandra Chakravarti	20 C. W. N. 1276	61
Municipal Board of Allahabad *v.* Tikandar Jang	I. L. R. 38 All. 52	103
Municipality of Belgaum *v.* Rudrappa	I. L. R. 40 Bom. 509	59
Munni Kunwar *v.* Madan Gopal	I. L. R. 38 All. 62	406
Murlidhar *v.* Diwan Chand	I. L. R. 38 All. 214	430
Murlidhar Narayan *v.* Vishnudas	I. L. R. 40 Bom. 321	413
Murtaza Husain Khan *v.* Muhammad Yasin Khan	I. L. R. 38 All. 552; L. R. 43 I. A. 269	297
Murugesa Mudaly *v.* Ramasami Chetty	I. L. R. 39 Mad. 882	74
Musahar Sahu *v.* Lala Hakim Lal	I. L. R. 43 Calc. 521; L. R. 43 I. A. 104; 20 C. W. N. 393.	408
Muthammal *v.* The Secretary of State for India	I. L. R. 39 Mad. 1202	48
Muthaya, *Re*	I. L. R. 39 Mad. 895	1
Muthu Raman *v.* Chinna Vellayan	I. L. R. 39 Mad. 965	288
Muthukaruppa Pillai *v.* Sellathammal	I. L. R. 39 Mad. 298	199

N

Nabadip Chandra Nandi *v.* Secretary of State for India	20 C. W. N. 511	65
Nabibhai Vazirbhai *v.* Dayabhai Amulakh	I. L. R. 40 Bom. 504	140
Nachimuthu Chetti *v.* Muthusami Chetti	I. L. R. 39 Mad. 1006	22
Nadia Chand Saha *v.* Birendra Chandra Dutt	20 C. W. N. 1067	229
Nagaraja Pillai *v.* The Secretary of State	I. L. R. 39 Mad. 304	151
Nagendra Mohan Roy *v.* Pyari Mohan Saha	I. L. R. 43 Calc. 103; 20 C. W. N. 319	218
Nagendra Nath Bose *v.* Parbati Charan	20 C. W. N. 819	171, 369
Nageshar Prasad Pande *v.* Pertab Narain Singh	20 C. W. N. 265	408
Nagindas Bhagwandas *v.* Bachoo Hurkissondas	I. L. R. 40 Bom. 270; L. R. 43 I. A. 56; 20 C. W. N. 702	196
Najm-un-nissa Bibi *v.* Amina Bibi	I. L. R. 38 All. 188	56
Nanda Lal Roy *v.* Abdul Aziz	I. L. R. 43 Calc. 1052	284
Narain Das *v.* Musammat Dhania	I. L. R. 38 All. 154	276
Narainbati *v.* Ramdhari Singh	20 C. W. N. 734	207
Narasammal *v.* The Secretary of State for India	I. L. R. 39 Mad. 885	212
Narayan Ramkrishna *v.* Vighneshwar	I. L. R. 40 Bom. 378	89
Narayana *v.* Ramalinga	I. L. R. 39 Mad. 587	195
Narayana Moothad *v.* The Cochin Sirkar	I. L. R. 39 Mad. 661	222
Narayanan *v.* Lakshmanan	I. L. R. 39 Mad. 456	419
Narayanan Singh *v.* Aiyasami Reddi	I. L. R. 39 Mad. 602	112
Narayanaswami Naidu *v.* Seshagiri Row	I. L. R. 39 Mad. 873	111
Narayanaswami Nayudu *v.* Subramanyam	I. L. R. 39 Mad. 683	258
Narayanaswamy *v.* Venkataramana	I. L. R. 39 Mad. 239	261
Narendra Bhusan Roy *v.* Jogendra Nath Roy	20 C. W. N. 1258	82

Name of Case.	Volume and Page.	Column of Digest.
Naresh Chandra Bose *v.* Hira Lal Bose	I. L. R. 43 Calc. 239 ; 20 C. W. N. 360	347
Narhar Damodar *v.* Bhau Moreshwar	I. L. R. 40 Bom. 621	193
Narna *v.* Ammani Amma	I. L. R. 39 Mad. 981	250
National Bank of India, Ld. *v.* A. K. Ghuznavi	I. L. R. 43 Calc. 285	317
Naubat Rai *v.* Dhaunkal Singh	I. L. R. 38 All. 184	388
Nawagarh Coal Co., Ld. *v.* Beharilal Trigunait	20 C. W. N. 1135	175, 275 277
Nazaralli Sayad Imam *v.* Babamiya Dureyatimsha	I. L. R. 40 Bom. 64	94
Nethiri Menon *v.* Gopalan Nair	I. L. R. 39 Mad. 597	39
Niadar Singh *v.* Ganga Dei	I. L. R. 38 All. 676	246
Nihal Singh *v.* Collector of Bulandshahr	I. L. R. 38 All. 237	107
Nihal Singh *v.* Khushhal Singh	I. L. R. 38 All. 297	80
Nihal Singh *v.* Sewa Ram	I. L. R. 38 All. 292	111
Nikhrannessa Bibi, *Re*	20 C. W. N. 663	178
Nikunja Rani Chowdhurani *v.* Secretary of State for India	I. L. R. 43 Calc. 230 ; 20 C. W. N. 504	311
Nilmoni Goswami *v.* Roban Majhi	20 C. W. N. 1243	41
Niras Purbe *v.* Tetri Pasin	20 C. W. N. 103	407
Nishi Kanta Lahiri *v.* The Crown	20 C. W. N. 732	127
Nishi Kanta Pal *v.* King-Emperor	20 C. W. N. 857	305
Nissim Isaac Bekhor *v.* Haji Sultanali Shastary & Co.	I. L. R. 40 Bom. 11	372
Nistarini Dasya *v.* Sarat Chandra Mazumdar	20 C. W. N. 49	62, 244
Nobo Kishore Saha *v.* Dhananjoy Saha	20 C. W. N. 610	289
Nripendra Nath Sahu *v.* Asutosh Ghose	I. L. R. 43 Calc. 640 ; 20 C. W. N. 420	172
Nrisingha Kumar Mukerjee *v.* Kumudendu Mukerjee	20 C. W. N. 1112	308
Nrityamoni Dassi *v.* Lakhan Chandra Sen	I. L. R. 43 Calc. 660 ; 20 C. W. N. 522	240
Nuri Mian *v.* Ambica Singh	20 C. W. N. 1099	321
Nuri Miah *v.* The Ganges Sugar Works, Limited	I. L. R. 38 All. 150	56
Nusserwanji & Co. *v.* S. S. Wartenfels	I. L. R. 40 Bom. 588	110

P

Paban Sardar *v.* Bhupendra Nath Nag	I. L. R. 43 Calc. 85	86
Padamsee Narainjee *v.* Lakhamsee Raisee	I. L. R. 43 Calc. 144	392
Pallia *v.* Mathura Prasad	I. L. R. 38 All. 280	79
Pandharinath Pundlik, *In re*	I. L. R. 40 Bom. 186	132
Pandurang Laxman *v.* Govind Dada	I. L. R. 40 Bom. 557	69
Param Hans *v.* Randhir Singh	I. L. R. 38 All. 461	410
Parameswaran Nambudri, *Re*	I. L. R. 39 Mad. 677	119
Parbhu Dayal *v.* Makbul Ahmad	I. L. R. 38 All. 163 ; L. R. 43 ; I. A. 43 ; 20 C.W. N. 425	348
Pardip Singh *v.* Emperor	I. L. R. 43 Calc. 277 ; 20 C. W. N. 855	382
Parmeshwar Dube, *v.* Gobind Dube	I. L. R. 43 Calc. 459 ; 20 C. W. N. 25.	194
Parvathi Ammal *v.* Govindasami Pillai	I. L. R. 39 Mad. 803	164

Name of Case.	Volume and Page.	Column of Digest.
Periah *v.* Lakshmidevamma	I. L. R. 39 Mad. 476	110
Perumal Nadan *v.* Sivanamji Nadachi	I. L. R. 39 Mad. 583	162
Piari Lal *v.* Hanif-un-nissa	I. L. R. 38 All. 240	60
Pirappa *v.* Annaji Appaji	I. L. R. 40 Bom. 189	145
Pleader, *In the matter of a*	20 C. W. N. 1069	423
Pleader, *In the matter of a*	I. L. R. 38 All. 182	234
Poorna Chandra Addy, *In re*	I. L. R. 43 Calc. 685; 20 C. W. N. 278	422
Prabhu Lal *v.* Kumar Krishna Dutt	20 C. W. N. 437	21
Prabhu Lal *v.* Kumar Krishna Dutt	20 C. W. N. 443	21
Pranjivandas Jagjivandas Mehta *v.* Chan Ma Phee	I. L. R. 43 Calc. 895; L. R. 43 I. A. 122; 20 C. W. N. 925	283
Prasanna Kumar Dutt *v.* Jnanendra Kumar Dutt	I. L. R. 43 Calc. 779	368
Promotha Nath Ray Chowdhury *v.* Dinamoni Chowdhrani	20 C. W. N. 552	377
Public Prosecutor, The *v.* Kadiri Koya	I. L. R. 39 Mad. 527	127
Puncha Thakur *v.* Bindeswari Thakur	I. L. R. 43 Calc. 28	295
Purna Chandra Trivedi *v.* Chandra Mohini Dassi.	20 C. W. N. 586	293
Puti Kabarini *v.* Berhampur Municipality	20 C. W. N. 1015	25

Q

Quiningborough, *In the goods of*	20 C. W. N. 591	111

R

Radha Kanta Guin *v.* Kartik Guin	20 C. W. N. 1302	211
Radha Kunwar *v.* Reoti Singh	I. L. R. 38 All. 488; L. R. 43 I. A. 187; 20 C. W. N. 1279.	57
Radha Sham Basak *v.* Secretary of State for India	20 C. W. N. 790	345
Radhika Prasad Bapudi *v.* Secretary of State for India	I. L. R. 38 All. 438	396
Raghumull *v.* Luchmondas	20 C. W. N. 708	37
Rahiman Bibi *v.* Mobarak Mondal	20 C. W. N. 672	121
Raimohan Karmakar *v.* King-Emperor	20 C. W. N. 1171	116
Raj Kumar Sarkel *v.* Raj Kumar Mali	20 C. W. N. 659	370
Raj Mangal Misir *v.* Mathura Dubain	I. L. R. 38 All. 1	158
Rajah of Pittapur *v.* Venkata Subba Row	I. L. R. 39 Mad. 645	262
Rajah Venkatappa Nayanim Bahadur *v.* Renga Rao	I. L. R. 39 Mad. 772	180
Rajammal *v.* Narayanasamy Naicker	I. L. R. 39 Mad. 219	322
Rajbans Sahay *v.* Mahabir Prasad	20 C. W. N. 828	226
Rajwant Prasad Pande *v.* Mahant Ram Ratan Gir	20 C. W. N. 35	139
Ram Bahadur Singh *v.* Ajodhya Singh	20 C. W. N. 699	411
Ram Chandra Bhanj Deo *v.* Secretary of State for India	I. L. R. 43 Calc. 1104; L. R. 43 I. A. 172; 20 C. W. N. 1245.	353
Ram Chandra Sil *v.* Ramanmani Dasi	20 C. W. N. 773	416, 428
Ram Charan Lal *v.* Rahim Baksh	I. L. R. 38 All. 416	201

Name of Case.	Volume and Page.	Column of Digest.
Ram Dutt Ramkissen Das *v.* E. D. Sassoon & Co.	I. L. R. 43 Calc. 77	91
Ram Harakh *v* Ram Lal	I. L. R. 38 All. 217	63
Ram Narain *v* Jagan Nath Prasad	I. L. R. 38 All. 115	421
Ram Narain Singh *v.* Chota Nagpur Banking Association.	I. L. R. 43 Calc. 332	232
Ram Narayan Singh *v.* Adhindra Nath Mukhurj	20 C. W. N. 989	279
Ram Parkash Das *v.* Anand Das	I. L. R. 43 Calc. 707 ; L. R. 43 I. A. 73 ; 20 C. W. N. 802	187
Ram Ratan Lal *v.* Bhuri Begam	I. L. R. 38 All. 7	398
Ram Sarup *v.* Jaswant Rai	I. L. R. 38 All. 82	243
Ram Singh *v.* Musammat Bhani	I. L. R. 38 All. 117	201
Ram Ugrah Pande *v.* Achraj Nath Pande	I. L. R. 38 All. 85	80
Rama *v.* Arunachalam	I. L. R. 39 Mad. 673	259
Rama *v.* Krishna	I. L. R. 39 Mad. 733	167
Rama Ayyar *v.* Govinda Pillai	I. L. R. 39 Mad. 952	20
Ramachandra Ayyar *v.* The President of the Vakils' Association, High Court, Madras	I. L. R. 39 Mad. 128	16
Ramachandra Rao *v.* Secretary of State for India	I. L. R. 39 Mad. 808	264
Ramakrishna *v.* Narayana	I. L. R. 39 Mad. 80	389
Raman Nair *v.* Gopala Menon	I. L. R. 39 Mad. 584	76
Ramanathan *v.* Ramaswami	I. L. R. 39 Mad. 60	260
Ramanujamma, *Re*	I. L. R. 39 Mad. 977	118
Ramasami Mooppan *v.* Srinivasa Iyengar	I. L. R. 39 Mad. 389	68
Ramaswami *v.* Pedamunayya	I. L. R. 39 Mad. 382	45
Ramayya *v.* Jagannadhan	I. L. R. 59 Mad. 930	264
Ramchandra Dhondo *v.* Malkapa	I. L. R. 40 Bom. 679	46
Ramchandra Dinkar *v.* Krishnaji Sakharam	I. L. R. 40 Bom. 118	140
Ramchandra Narayan *v.* Shripatrao	I. L. R. 40 Bom. 248	44
Ramdas Vithaldas *v.* Amerchand & Co.	I. L. R. 40 Bom. 630 ; L. R. 43 I. A. 164 ; 20 C. W. N. 1182	104
Rameswar Malia *v.* Sri Sri Jiu Thakur	I. L. R. 43 Calc. 34	240
Ramkrishna Trimbak *v.* Narayan	I. L. R. 40 Bom. 126	186
Ramnath Gagoi *v.* Pitambar Deb Goswami	I. L. R. 43 Calc. 733	302
Ranga Ayyangar *v.* Narayana Chariar	I. L. R. 39 Mad. 896	411
Rangappa *v.* Bhimappa	I. L. R. 39 Mad. 949	351
Rangappa *v.* Venkanbhat	I. L. R. 40 Bom. 112	425
Rangasami *v.* Souri	I. L. R. 39 Mad. 792	159
Rangayya, *Re*	I. L. R. 39 Mad. 604	129
Rangi Lal *v.* Jassa	I. L. R. 38 All. 286	420
Rash Behari Lal Munder *v.* Tiluckdhari Lall	20 C. W. N. 485	32
Rashbehary Lal Mandar *v.* Anand Ram	I. L. R. 43 Calc. 211	239
Rasik Lal Nag, *In the matter of*	20 C. W. N. 1284	234
Ratan Bepari, *v.* Hira Lal Sarkar	20 C. W. N. 1110	79
Ravaneshwar Singh *v.* Chandi Prasad Singh	I. L. R. 43 Calc. 417	185
Rayan Khan *v.* Emperor	I. L. R. 43 Calc. 1024 ; 20 C. W. N. 1133	399
Retki *v.* Lak Pati Pujari	20 C. W. N. 19	181
Rivers Steam Navigation Co., Ld. *v.* Hathor Steamship Co., Ld.	20 C. W. N. 1022	7
Ross *v.* Secretary of State for India	I. L. R. 39 Mad. 781	377
Ross & Co. *v.* C. R. Scriven	I. L. R. 45 Calc. 1001 ; 20 C. W. N. 1192	162

Name of Case.	Volume and Page.	Column of Digest.
S		
Sadhu Charan Dutta *v.* Haranath Dutta	20 C. W. N. 231	301
Sadik Husain Khan *v.* Hashim Ali Khan	I. L. R. 38 All. 627 ; L. R. 43 I. A. 212	270
Safait Hosain *v.* Shaikh Waizuddin	20 C. W. N. 1207	30
Sahdeo Lal Bhagat *v.* Kesho Mohan Thakur	20 C. W. N. 1274	315
Sakhawat Ali Shah *v.* Muhammad Abdul Karim Khan	I. L. R. 38 All. 59	164
Salimullah *v.* Probhat Chandra Sen	I. L. R. 43 Calc. 1118	194
Salimullah *v.* Rahenuddi	I. L. R. 43 Calc. 263 ; 20 C. W. N. 156	364
Sanivarappet, Zamindar of *v.* Zamindar of South Vallur	I. L. R. 39 Mad. 944	259
Santi Lal *v.* The Indian Exchange Bank	I. L. R. 38 All. 587	84
Sarat Chandra Pal *v.* Benode Kumari Dasi	20 C. W. N. 28	337
Saroje Bashini Debi, *In re*	20 C. W. N. 1125	112
Sathyabhama *v.* Kesavacharya	I. L. R. 39 Mad. 658	202
Satish Chandra Ghosh *v.* Ramessari Dassi	20 C. W. N. 665	370
Satish Chandra Mitra *v.* Jogendra Nath Mohalanabis	20 C. W. N. 1044	158
Satish Chandra Singha *v.* Ananda Gopal Das	20 C. W. N. 816	227
Satyendra Nath Banerjee *v.* Krishnadhan Adhikary	20 C. W. N. 1014	117
Satyendra Nath Dey *v.* The Secretary of State for India	20 C. W. N. 975	255
Sayad Amir Saheb *v.* Shekh Masleudin	I. L. R. 40 Bom. 541	55
Secretary of State for India, *v.* Assan	I. L. R. 39 Mad. 727	263
Secretary of State for India *v.* Chellikani Rama Rao	I. L. R. 39 Mad. 617 ; L. R. 43 I. A. 192 ; 20 C. W. N. 1311	241
Secretary of State for India *v.* Cockcraft	I. L. R. 39 Mad. 351	404
Secretary of State for India *v.* Gulam Rasul	I. L. R. 40 Bom. 392	52
Secretary of State for India *v.* Maharajah of Tipperah	L. R. 43 I. A. 303	428
Secretary of State for India *v.* Rangasamy Ayyangar	I. L. R. 39 Mad. 831	115
Seshagiri Rao *v.* Hanumantha Rao	I. L. R. 39 Mad. 1031	141
Sewaram Gokaldas *v.* Bajrangdat Hardwar	I. L. R. 40 Bom. 473	210
Shaik *v.* Muhammad	I. L. R. 39 Mad. 664	266
Shambhu Singh *v.* Daljit Singh	I. L. R. 38 All. 243	422
Shankar Babaji *v.* Dattatraya Bhiwaji	I. L. R. 40 Bom. 55	35
Shavakshaw *v.* Tyab Haji Ayub	I. L. R. 40 Bom. 386	53
Sheikh Galim *v.* Sadarjan Bibi	I. L. R. 43 Calc. 59	384
Sheo Shankar *v.* Chunni Lal	I. L. R. 38 All. 669	67
Sheoparsan Singh *v.* Ramnandan Prasad Singh	I. L. R. 43 Calc. 694 ; L. R. 43 I. A. 91 ; 20 C. W. N. 738	138, 357
Sherjan Khan *v.* Alimuddi	I. L. R. 43 Calc. 511 ; 20 C. W. N. 268	333
Shutari *v.* The Magnesite Syndicate, Ltd.	I. L. R. 39 Mad. 501	362
Singa Reddi *v.* Subba Reddi	I. L. R. 39 Mad. 987	72
Sitabai *v.* Laxmibai	I. L. R. 40 Bom. 337	48
Sital Chandra Chowdhury *v.* A. J. Delanney	20 C. W. N. 1158	89, 150

Name of Case.	Volume and Page.	Column of Digest.
Sital Prasad *v.* Emperor	I. L. R. 43 Calc. 591 ; 20 C. W. N. 199	378
Sital Prasad *v.* Gobind Prasad	I. L. R. 38 All. 75	72
Sital Prasad and Others, *In Re*	I. L. R. 43 Calc. 1157 ; 20 C. W. N. 1065	213
Sitharama Chetty *v.* Sir S. Subramanya Iyer	I. L. R. 39 Mad. 700	352
Sivaramayya *v.* Bhujanga Rao	I. L. R. 39 Mad. 593	340
Sivasubramania Ayyar *v.* Subramania Ayyar	I. L. R. 39 Mad. 997	409
Sobhanadri, *Re*	I. L. R. 39 Mad. 503	123
Somwarpuri *v.* Mata Badal	I. L. R. 38 All. 351	37
Sonai Chutia *v.* Sonaram Chutia	20 C. W. N. 195	409
Sonu valad Khushal *v.* Bahinibai	I. L. R. 40 Bom. 351	63
Sorabji Nusserwanji *v.* C. A. Patwardhan	I. L. R. 40 Bom. 134	83
Soundararajan *v.* Arunachalam Chetty (1)	I. L. R. 39 Mad. 136	200
Soundararajan *v.* Arunachalam Chetty (2)	I. L. R. 39 Mad. 159	190
Sri Jagannada Raju *v.* Sri Rajah Prasada Rao	I. L. R. 39 Mad. 554	165
Sri Kishan Lal *v.* Kashmiro	20 C. W. N. 957	344
Sri Rajah Rama Row *v.* Rajah of Pittapur	I. L. R. 39 Mad. 396	193
Sri Rajah Simhadri Raju *v.* Secretary of State	I. L. R. 39 Mad. 67	265
Srimath Jagannatha Charyulu *v.* Kutambarayudu	I. L. R. 39 Mad. 21	42
Srinivasa Iyengar *v.* Ramaswami Chettiar	I. L. R. 39 Mad. 235	237
Srinivasacharlu *v.* Perindevamma	I. L. R. 39 Mad. 725	110
Subbamma *v.* Subramanyam	I. L. R. 39 Mad. 1035	201
Subbaraju *v.* Seetharamaraju	I. L. R. 39 Mad. 283	394
Subbaraya Chetti, *Re*	I. L. R. 39 Mad. 928	115
Subbayya *v.* Ramayya	I. L. R. 39 Mad. 537	128
Subbiah *v.* Rami Reddi	I. L. R. 39 Mad. 959	412
Subedar Ahir *v.* Emperor	I. L. R. 43 Calc. 13	216
Subrahmanian Chettiar *v.* Kadiresan Chettiar	I. L. R. 39 Mad. 1081	246
Subramania Ayyar *v.* Sellammal	I. L. R. 39 Mad. 843	58
Subramania Pillai *v.* Kumaravelu Ambalam	I. L. R. 39 Mad. 541	66
Subramanian Chettiar *v.* Raja Rajeswara Dorai	I. L. R. 39 Mad. 115 ; 20 C. W. N. 201	417
Sukumari Ghose *v.* Gopi Mohan Goswami	I. L. R. 43 Calc. 190	109
Sumanta Dhupi *v.* King-Emperor	20 C. W. N. 166	307
Sundaram Ayyar *v.* Kulathu Ayyar	I. L. R. 39 Mad. 1018	258
Sunder Kuer *v.* King-Emperor	20 C. W. N. 923	390
Suppi *v.* Kunhi Koya	I. L. R. 39 Mad. 907	78
Suradhani Debya *v.* Chandra Nath Pramanik	20 C. W. N. 1011	71
Suraj Bhan *v.* Boot and Equipment Factory, Agra	I. L. R. 38 All. 407	84
Surajdeo Narayan Singh *v.* Musharoo Raut	20 C. W. N. 950	280
Surajmall Agarwallah *v.* Ram Chandra Maintri	20 C. W. N. 412	69
Surendra Narain Mahata *v.* Jugal Kishore Ghosh	20 C. W. N. 849	294
Surendra Narain Roy Chowdhury *v.* Dina Nath Bose	I. L. R. 43 Calc. 554	355
Surendra Narayan Singh *v.* Lachmi Koer	I. L. R. 43 Calc. 100	146
Sures Chandra Palit *v.* Lalit Mohan Dutta	20 C. W. N. 463	207
Suresh Kanta Banerjee *v.* Nawab Ali Sikdar	20 C. W. N. 356	334
Suressur Misser *v.* Mohesh Rani Mesrain	20 C. W. N. 142	209, 284
Swarnamayee Debi *v.* Secretary of State for India	I. L. R. 43 Calc. 625 ; 20 C. W. N. 472	335
Syed Ahmad *v.* Magnesite Syndicate, Ltd.	I. L. R. 39 Mad. 1049	401

Name of Case.	Volume and Page.	Column of Digest.
T		
Taher Mondal *v.* Tarafdi Gharami	20 C. W. N. 661	245
Taj Singh *v.* Jagan Lal	I. L. R. 38 All. 289	66
Tamijuddi Sheikh *v.* Satya Sankar Ghosal	20 C. W. N. 391	78
Tangya Fala *v.* Trimbak Daga	I. L. R. 40 Bom. 646	103
Tayebulla *v.* Emperor	I. L. R. 43 Calc. 1152 ; 20 C. W. N. 1265	374
Textile Manufacturing Co., Ltd. *v.* Salomon Brothers	I. L. R. 40 Bom. 570	107
Tiruvengada Konan *v.* Venkatachala Konan	I. L. R. 39 Mad. 1042	235
Tiruvenkatachariar *v.* Thangayiammal	I. L. R. 39 Mad. 479	339
Trasi Deva Rao *v.* Parameshwaraya	I. L. R. 39 Mad. 74	214
Tribikram Deo Narayan Singh *v.* Badri Misser	20 C. W. N. 1051	254
Tuni Orain *v.* Leda Oraon	20 C. W. N. 1082	209, 395
U		
Udhishter Singh *v.* Kausilla	I. L. R. 38 All. 398	74
Udit Narain Misir *v.* Asharfi Lal	I. L. R. 38 All. 502	284
Umakanta Sen Chowdhury *v.* Hira Lal Ray	20 C. W. N. 852	113
Umed Singh *v.* Seth Sobhag Mal Dhadha	I. L. R. 43 Calc. 290 ; L. R. 43 I. A. 1 ; 20 C. W. N. 137	17
Upendra Nath Bose *v.* Bindesri Prosad	20 C. W. N. 210	208, 237
Usmanmiya *v.* Valli Mahomed	I. L. R. 40 Bom. 28	265
Uzir Ali Sardar *v.* Savai Behara	I. L. R. 43 Calc. 938 ; 20 C. W. N. 547	354
V		
Varadaraja Mudali *v.* Murugesam Pillai	I. L. R. 39 Mad. 923	253
Veeraraghava Ayyar *v.* Muga Sait	I. L. R. 39 Mad. 24	169
Velayutham *v.* Subbaroya	I. L. R. 39 Mad. 879	8
Vellayan Chetty *v.* Mahalinga Aiyar	I. L. R. 39 Mad. 386	16
Vellayanambalam *v.* Solai Servai	I. L. R. 39 Mad. 505	129
Velliappa *v.* Subrahmanyam	I. L. R. 39 Mad. 485	81
Venkata Perumal Raja *v.* Ramudu	I. L. R. 39 Mad. 84	260
Venkata Subba Reddi *v.* Bagiammal	I. L. R. 39 Mad. 419	282
Venkatanarayana Pillay *v.* Subbammal	I. L. R. 39 Mad. 107 ; L. R. 43 I. A. 20 ; 20 C. W. N. 234	204
Venkatarama Raju *v.* Papamma	I. L. R. 39 Mad. 77	181
Venkatasubba Rao *v.* The Asiatic Steam Navigation Co., Calcutta	I. L. R. 39 Mad. 1	383
Venkatchalam *v.* Narayanan	I. L. R. 39 Mad. 376	248
Venkayamma Rao *v.* Appa Rao	I. L. R. 39 Mad. 509 ; L. R. 43 I. A. 138 ; 20 C. W. N. 1054	93
Venugopal Mudali *v.* Venkatasubbiah Chetty	I. L. R. 39 Mad. 1196	245
Vijaya Ramayya *v.* Venkatasubba Rao	I. L. R. 39 Mad. 853	73

Name of Case.	Volume and Page.	Column of Digest.
Vijayabhushanammal *v.* Evalappa Mudaliar	I. L. R. 39 Mad. 17	283
Vinayakrao Balasaheb *v.* Shamrao Vithal	I. L. R. 40 Bom. 655	144
Viswanadha Reddi *v.* Keymer	I. L. R. 39 Mad. 95	169
Vyapuri *v.* Sonamma Boi Ammani	I. L. R. 39 Mad. 811	8
Vyravan Chetty *v.* Srimath Deivasikamani Nataraja Desikar	I. L. R. 39 Mad. 939	236
W		
Wahidunnisa Bibi *v.* Deep Narain Prasad	20 C. W. N. 1174	301
Wallace *v.* Wallace	I. L. R. 40 Bom. 109	149
Wasappa *v.* Secretary of State for India	I. L. R. 40 Bom. 200	362
Wasi-uz-zaman Khan *v.* Faiza Bibi	I. L. R. 38 All. 131	293
Whitton *v.* Mammad Maistry	I. L. R. 39 Mad. 889	263
Y		
Yakub Ali *v.* Meajan	I. L. R. 43 Calc. 164	229
Yella Reddi *v.* Syed Muhamadalli	I. L. R. 39 Mad. 1026	43
Z		
Zamindar of Chillapalli *v.* Somaya	I. L. R. 39 Mad. 341	258
Zamindar of Sanivarappet *v.* Zamindar of Soith Vallur	I. L. R. 39 Mad. 944	259

ANNUAL DIGEST

OF

THE HIGH COURT REPORTS

AND OF

THE PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,

1916.

A

ABATEMENT OF SUIT.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882) SS. 366, 371.
I. L. R. 40 Bom. 248

See HINDU LAW — DAUGHTER'S ESTATE.
I. L. R. 38 All. 111

ABDICATION.

See MAHANT. . **I. L. R. 43 Calc. 700**

ABETMENT.

See PENAL CODE (ACT XLV OF 1860), SS. 361, 366, 109.
I. L. R. 38 All. 664

ABKARI ACT (MAD. I OF 1886).

——— **ss. 56, 64—**

——— *Offence under section 56 not by licensee but by his depôt-writer—Conviction, legality of.* SS. 56 and 64 of the Abkari Act (Madras Act I of 1886) should be read together and not only the licensee but also the actual offender is liable to prosecution for offences under s. 56 of the Act. *Re Sudalaimuthu, 1 Weir's Cr. R. 647,* followed. *Re* MUTHAYA (1915)
I. L. R. 39 Mad. 895

ABSCONDING OFFENDER.

See CRIMINAL PROCEDURE CODE, S. 512.
I. L. R. 38 All. 29

ABSCONDING PERSON.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 88.
I. L. R. 39 Mad. 831

ACCEPTANCE BY PLEADER.

See VAKALATNAMA.
I. L. R. 43 Calc. 884

ACCOUNT.

See CIVIL PROCEDURE CODE (ACT V OF 1908, O. I, R. 8.
I. L. R. 40 Bom. 158

See HINDU LAW—PARTITION.
I. L. R. 43 Calc. 459

See PARTNERSHIP.
I. L. R. 43 Calc. 733

——— **suit for—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92.
I. L. R. 40 Bom. 439

See COURT FEES ACT (VII OF 1870), S. 7, CL. (*4*). . **I. L. R. 39 Mad. 725**

See PRINCIPAL AND AGENT
I. L. R. 43 Calc. 248

——— *Account, suit for, costs of suit pending reference for account.* In a suit for accounts where the defendant resisted plaintiffs' claim for an account costs were awarded to the plaintiffs up to and including the hearing by the decree directing reference for an account. HYAM *v.* BENGAL STONE CO. (1916) . **20 C. W. N. 368**

ACCOUNT BOOKS.

——— **presumption to be drawn from—**

See PRINCIPAL AND AGENT.
I. L. R. 43 Calc. 527

ACCUSED.

See PRACTICE . **I. L. R. 40 Bom. 220**

ACCUSED—*concld.*

———— **to put questions to, by Court—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 342
I. L. R. 39 Mad. 770

———— **to recall and cross-examine prosecution witnesses—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 256.
I. L. R. 39 Mad. 503

ACKNOWLEDGMENT.

See MAHOMEDAN LAW—GIFT.
I. L. R. 38 All. 627

See MORTGAGE **I. L. R. 38 All. 540**

ACKNOWLEDGMENT OF DEBT.

See COURT OF WARDS.
I. L. R. 43 Calc. 211

ACKNOWLEDGMENT OF SON.

See MAHOMEDAN LAW—ACKNOWLEDGMENT OF SON.
I. L. R. 40 Bom. 28

ACQUIESCENCE.

———— *what amounts to—*

Doctrine not to be invoked in favour of party taking possession of land by wrongful means. The plaintiff sued for recovery of possession of land on declaration that it was included within his tenancy under the defendants landlords who had induced him to give up possession of the land upon a promise to pay consideration for it or in exchange to give lands situated elsewhere, neither of which, however, was given to the plaintiff. *Held,* that mere quiescence is not acquiescence. That the plaintiff did not stand by in such a manner as to induce the defendants to believe that he assented to the acts of the defendants and the doctrine of acquiescence had no application in the circumstances of the case. That the defendants acquired no title to the land and the Court should not assist them in disregard of the principles of justice, equity and good conscience to retain possession of land which they had seized by questionable methods. That a Court of Equity will not have recourse to the doctrine of estoppel or acquiescence for the benefit of a party who does not come into Court with clean hands. JAHARADDI MANDAL *v.* DEBNATH NATH CHAUDHURY (1915) . **20 C. W. N. 657**

ACQUISITION.

———— **by landlord—**

See MADRAS ESTATES LAND ACT (I OF 1908), S. 6, SUB-S. (*6*), S. 8.
I. L. R. 39 Mad. 944

———— **by tenant—**

See MADRAS ESTATE LANDS ACT, SS. 6, 8.
I. L. R. 39 Mad. 944

ACQUITTAL.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 403.
I. L. R. 40 Bom. 97

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 421, 233, 537.
I. L. R. 39 Mad. 527

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 439, 422, 423.
I. L. R. 39 Mad. 505

See PREVIOUS ACQUITTAL.

ACT.

———— **1858—I.**

See GOVERNMENT OF INDIA ACT.

———— **1859—XI.**

See REVENUE SALE LAW.

———— **1860—XXVIII.**

See BOUNDARIES ACT.

———— **1860—XLV.**

See PENAL CODE.

———— **1861—V.**

See POLICE ACT.

———— **1863—XX.**

See RELIGIOUS ENDOWMENTS ACT.

———— **1863—XXIII.**

See WASTE LANDS ACT.

———— **1865—III.**

See CARRIERS ACT.

———— **1865—X.**

See SUCCESSION ACT.

———— **1866—XV.**

See TRUSTEES ACT.

———— **1867—III.**

See PUBLIC GAMBLING ACT.

———— **1869—IV.**

See DIVORCE ACT.

———— **1870—VII.**

See COURT FEES ACT.

———— **1872—I.**

See EVIDENCE ACT.

———— **1872—IX.**

See CONTRACT ACT.

———— **1873—X.**

See OATHS ACT.

———— **1873—XII.**

See GENERAL REPEALING ACT.

———— **1874—VI.**

See PRIVY COUNCIL APPEALS ACT.

———— **1875—X.**

See MAJORITY ACT.

ACT—*contd*

——— **1876—XI.**

See PRESIDENCY BANKS ACT.

——— **1877—I.**

See SPECIFIC RELIEF ACT.

——— **1877—XV.**

See LIMITATION ACT, 1877.

——— **1878—I.**

See OPIUM ACT.

——— **1878—VII.**

See FOREST ACT.

——— **1878—VIII.**

See SEA CUSTOMS ACT.

——— **1879—XVIII.**

See LEGAL PRACTITIONERS ACT.

——— **1881—V.**

See PROBATE AND ADMINISTRATION ACT.

——— **1881—XXVI.**

See NEGOTIABLE INSTRUMENTS ACT.

——— **1882—II.**

See TRUSTS ACT.

——— **1882—IV.**

See TRANSFER OF PROPERTY ACT.

——— **1882—V.**

See EASEMENTS ACT.

——— **1882—VI.**

See COMPANIES ACT.

——— **1882—XIV.**

See CIVIL PROCEDURE CODE, 1882.

——— **1882—XV.**

See PRESIDENCY SMALL CAUSE COURTS ACT.

——— **1883—XIX.**

See LAND IMPROVEMENT LOANS ACT.

——— **1885—VIII.**

See BENGAL TENANCY ACT.

——— **1886—II.**

See INCOME-TAX ACT.

——— **1887—VII.**

See SUITS' VALUATION ACT.

——— **1887—IX.**

See PROVINCIAL SMALL CAUSE COURTS ACT.

——— **1887—XII.**

See CIVIL COURTS ACT.

——— **1889—VII.**

See SUCCESSION CERTIFICATE ACT.

——— **1890—VIII.**

See GUARDIANS AND WARDS ACT.

ACT—*concld.*

——— **1894—I.**

See LAND ACQUISITION ACT.

——— **1898—V.**

See CRIMINAL PROCEDURE CODE.

——— **1899—IX.**

See ARBITRATION ACT.

——— **1901—I.**

See ASSAM LABOUR AND EMIGRATION ACT.

——— **1905—VI.**

See COURT FEES AMENDMENT ACT.

——— **1907—III.**

See PROVINCIAL INSOLVENCY ACT.

——— **1908—V.**

See CIVIL PROCEDURE CODE.

——— **1908—IX.**

See LIMITATION ACT.

——— **1908—XVI.**

See REGISTRATION ACT.

——— **1909—III.**

See PRESIDENCY TOWNS INSOLVENCY ACT.

——— **1910—I.**

See PRESS ACT.

——— **1910—IX.**

See ELECTRICITY ACT.

——— **1912—IV.**

See LUNACY ACT.

——— **1913—VI.**

See MUSSALMAN WAKF VALIDATING ACT.

——— **1913—VII.**

See COMPANIES ACT.

ADDITIONAL EVIDENCE.

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 27. . **I. L. R. 38 All. 191**

ADEN SETTLEMENT REGULATION (VII OF 1900).

——— **s. 13**—*Municipal affairs at Aden—Executive Committee—Rating of property for purposes of taxation—Rating value fixed by the Resident at Aden in a rating appeal—Finality of the decision of the Resident as to value—Jurisdiction of Civil Courts to examine the value in a civil suit—Rule made under the Regulation to give finality to the Resident's decision in rating appeal is ultra vires.* The Aden Settlement Regulation (VII of 1900) provided for the establishment of an Executive Committee for the Municipal Government of Aden; and its clause 13 authorised the Resident, subject to the previous sanction of the Local Government, to make rules to provide for " the assessment and collection of any toll, cess, tax or other impost imposed under the Regulation." The rules so made provided, *inter alia*, for the preparation of an assessment list

ADEN SETTLEMENT REGULATION (VII OF 1900)—*concld.*

——— **s. 13**—*concld.*

containing " the annual letting value or other valuation on which the property is assessed," for complaints to the Executive Committee where any property was for the time being entered in the list or in which the entered rateable value had been increased, and for appeals against any rateable value to the Judge of the Resident's Court. Rule 12 provided that after appeals, if any, were decided and the results noted in the assessment list, all rateable values so entered in the list were final. The lower Courts held, on a construction of the above rule, that it made the decision of the Judge of the Resident's Court in a rating appeal conclusive, and that the aggrieved party could not question it by a civil suit. *Held*, that the rule 12, read as it had been by the lower Courts, was *ultra vires*, inasmuch as a distinct unequivocal enactment was required for the purpose of either adding to or taking away the jurisdiction of a Court. ABDULLABHAI LALLJEE *v.* THE EXECUTIVE COMMITTEE, ADEN (1916) . . **I. L. R. 40 Bom. 446**

ADJUSTMENT OF SUIT.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 89, O. XXIII, R. 3.
I. L. R. 40 Bom. 386

ADMINISTRATION SUIT.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92.
I. L. R. 40 Bom. 439, 541

ADMINISTRATRIX.

See VENDOR AND PURCHASER.
I. L. R. 40 Bom. 69

ADMIRALTY JURISDICTION.

——— *Collision case—Decision of trial Judge, weight to be attached to—Trial with aid of Nautical Assessors.* In collision cases, no rule is better established than this, that when questions of fact alone arise, a Court of Appeal should be most chary of interfering with the decision of a trial Judge who has seen the witnesses and had the opportunity of forming his estimate of them by their demeanour. Only in exceptional cases and for special reasons, should a Court which has not had this advantage reverse the judgment of the trial Judge on questions of fact. RIVERS STEAM NAVIGATION COMPANY *v.* THE HATHOR STEAMSHIP COMPANY, LD. (1916)
20 C. W. N. 1022

ADMISSION.

See EVIDENCE ACT (I OF 1872), S. 70.
I. L. R. 38 All. 1

ADOPTED SON.

——— **rights of—**

See HINDU LAW—STRIDHAN
I. L. R. 43 Calc. 944

ADOPTION.

See HINDU LAW—ADOPTION.

See HINDU LAW—PARTITION.
I. L. R. 40 Bom. 270

See HINDU LAW—STRIDHAN.
I. L. R. 43 Calc. 944

——— **subsequent completion of, by testator—**

See HINDU LAW—WILL.
I. L. R. 39 Mad. 107

——— **validity of—**

See HINDU LAW—ADOPTION.
I. L. R. 39 Mad. 77

ADVERSE POSSESSION.

See HINDU LAW—ALIENATION BY WIDOW
I. L. R. 43 Calc. 417

See LIMITATION ACT (XV OF 1877), ARTS. 144, 149 . **I. L. R. 39 Mad. 617**

See MORTGAGE **I. L. R. 38 All. 411**

See SALE FOR ARREARS OF REVENUE.
I. L. R. 43 Calc. 779

See SARANJAM **I. L. R. 40 Bom. 606**

1. ——— *Co-owners—Notice of hostile claim, if necessary—Possession, hostile at commencement—Subsequent accrual of title as co-owner—Possession continued, not hostile—Limitation Act (IX of 1908), Sch. II, Arts. 134 and 144.* The plaintiff and the third defendant were the reversionary heirs of one *C* who had mortgaged the suit properties to one *P*. The third defendant's father purchased the properties from *P* in 1893 without notice of the mortgage and has been in possession of the same ever since. The widow of *C* died on the 6th September 1900. The plaintiff brought this suit on the 2nd September 1912 to redeem the properties. The third defendant pleaded that the suit was barred by limitation: *Held*, that the suit was not barred by limitation. Possession held by one of the co-owners will not be adverse to the others until they have notice of the hostile claim. Though possession was hostile when it commenced, still such possession will not continue to be hostile on the accrual of a peaceful title before the completion of the adverse possession. VELAYUTHAM *v.* SUBBAROYA (1915) . **I. L. R. 39 Mad. 879**

2. ——— *Simple mortgage—Dispossession of mortgagor after mortgage, not adverse to the mortgagee.* The possession of a trespasser who has dispossessed a mortgagor, the mortgage being simple is not adverse to the simple mortgagee. *Parthasarathy Naicker* v. *Lakshmana Naicker, I. L. R. 35 Mad. 231*, followed. RAMASAMI CHETTI *v.* PONNA PADAYACHI, *I. L. R. 36 Mad. 97*, overruled. VYAPURI *v.* SONAMMA BOI AMMANI (1915) . . **I. L. R. 39 Mad. 811**

ADVOCATE-GENERAL.

See COSTS . **I. L. R. 40 Bom. 588**

AGENCY.

See SCOPE OF AGENCY.

——— termination of—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 89 . **I. L. R. 39 Mad. 376**

AGENCY TRACTS.

See CONTRACT ACT (IX OF 1872), SS. 69 AND 70 . **I. L. R. 39 Mad. 795**

AGENT.

——— duty of—

See PRINCIPAL AND AGENT. **I. L. R. 43 Calc. 248**

——— fraudulent conduct of—

See PRINCIPAL, LIABILITY OF **I. L. R. 43 Calc. 511**

——— liability of, to principal—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 89 . **I. L. R. 39 Mad. 376**

AGRA TENANCY ACT (II OF 1901).

——— s. 22—

1. ——— *Occupancy holding—Hindu female in possession as such of occupancy holding—Succession.* There is nothing in the Agra Tenancy Act to enlarge the estate in an occupancy holding of a Hindu female in possession at the time the Act of 1901 was passed, beyond the ordinary estate of a Hindu female. The Act not having provided for the devolution of the interest in an occupancy holding where it was, at the passing of the Act, in the possession of a Hindu female as such, the rights of the parties claiming such holding on the death of the last female occupant must be ascertained according to the ordinary Hindu Law. BISHESHAR AHIR *v.* DUKHARAN AHIR (1916) **I. L. R. 38 All. 197**

2. ——— *Occupancy holding—Succession—Holding owned by a joint Hindu family.* An occupancy holding owned by a joint Hindu family does not devolve at the death of the last surviving member of the joint family on that member's widow. MAHABIR SINGH *v.* BHAGWANTI, (1916) . . . **I. L. R. 38 All. 325**

——— ss. 58, 177 (*e*)—*Suit for ejectment—Question of proprietary title—Appeal—Jurisdiction.* In a suit for ejectment under section 58 of the Tenancy Act, defendant denied the plaintiff's title and set up another man as his the landlord. The Court of first instance decreed the claim. *Held*, that an appeal from his decision lay to the District Judge under s. 177 (*e*) of the Act, inasmuch as the question of the plaintiff's proprietary title was put in issue in the Court of first instance and was a matter in issue in the appeal. GANGA PRASAD *v.* HAR NARAIN, (1916) . **I. L. R. 38 All. 465**

——— s. 124—*Distress—Attachment—Removal by tenants of distrained crops—Theft—Penal Code (Act XLV of 1860), s. 379.* A distress legally carried out according to the provisions of the Agra Tenancy Act, 1901, takes priority over the rights of a decree-holder who has attached the crops distrained, and this notwithstanding that the distress may be the result of collusion between the landlord and his tenants. When, therefore, certain cultivators acting under section 124 (*1*) of the Agra Tenancy Act, cut and stored certain crops which had been distrained by their landlord, but which had also been previously attached by a decree-holder: *Held*, that they had committed no offence. EMPEROR *v.* RAM DAYAL (1915) **I. L. R. 38 All. 40**

AGRA TENANCY ACT (II OF 1901)—*contd.*

——— s. 124—*concld.*

Tenancy Act, 1901, takes priority over the rights of a decree-holder who has attached the crops distrained, and this notwithstanding that the distress may be the result of collusion between the landlord and his tenants. When, therefore, certain cultivators acting under section 124 (*1*) of the Agra Tenancy Act, cut and stored certain crops which had been distrained by their landlord, but which had also been previously attached by a decree-holder: *Held*, that they had committed no offence. EMPEROR *v.* RAM DAYAL (1915) **I. L. R. 38 All. 40**

——— s. 164—

1. ——— *Jurisdiction—Civil and Revenue Courts—"Profits"—Income derived from land and houses in the abadi. Held*, that the income derived from land and houses in the abadi could not properly be regarded as profits of the mahal in respect of which a suit was cognizable exclusively by the Court of Revenue under section 164 of the Agra Tenancy Act, 1901. *Baldeo Singh* v. *Beni Singh*, 1899, *All Weekly Notes*, 57, referred to. DIGBIJAI SINGH *v.* HIRA DEVI (1916) **I. L. R. 38 All. 322**

2. ——— *Suit against lambardar for profits—Sir and khudkasht land held by co-sharers to be taken into account. Held*, that in a suit for profits brought by a co-sharer against a lambardar under s. 164 of the Agra Tenancy Act, 1901, the plaintiff is entitled to have taken into account the profits of sir and khudkasht land held by the other co-sharers in the village. *Bishambhar Nath* v. *Bhullo, I. L. R. 34 All. 98*, discussed. *Gulzari Mal* v. *Jai Ram, I. L. R. 36 All. 441*, referred to. GANGA SINGH *v.* RAM SARUP (1916) **I. L. R. 38 All. 223**

——— ss. 182, 183—*Suit for rent—Second Appeal to District Judge—Remand—Appeal—Civil Procedure Code (1908), Order XLI, rule 23. Held*, that no appeal lies from an order of remand under Order XLI, rule 23, of the Code of Civil Procedure made by a District Judge in an appeal in a suit for rent under s. 180, clause (2), of the Agra Tenancy Act, 1901. GULZARI LAL *v.* LATIF HUSAIN (1916) . . **I. L. R. 38 All. 181**

——— s. 202—*Remand—Effect of Revenue Court decision on question of tenancy in a former suit, in a subsequent suit in a Civil Court for ejectment as trespasser.* Defendants were tenants of one *D*. *D* took proceedings in the Revenue Courts to eject them as tenants at will. The Assistant Collector dismissed the suit, but the Commissioner allowed the appeal. The Board of Revenue, however, in second appeal dismissed the suit. *D* in the meantime had executed the decree passed by the Commissioner and obtained possession. Upon the decree passed by the Board of Revenue in their favour the defendants made an application to be restored to possession, but it was rejected as time-barred. *D*'s son brought the present suit to eject the defendants as trespassers alleging that he had been in possession of the land as his *khud kasht*;

AGRA TENANCY ACT (II OF 1901)—*concld.*

——— s. 202—*concld.*

that the defendants had entered into forcible possession and that the effect of the Revenue Court proceedings was to extinguish the tenancy. The defendants pleaded that the tenancy subsisted. The Court of first instance decided that the tenancy was subsisting, but granted to the plaintiff damages for forcible dispossession. The lower Appellate Court remanded the case to the first Court with directions to act in accordance with the provisions of s. 202 of the Agra Tenancy Act. *Held*, that the order was the proper one to make in the circumstances of the case, and the question whether by reason of the events that had happened since the decision of the Board of Revenue the tenancy was extinguished or not was one which the Revenue Courts were competent to decide. *Maru* v. *Gauri Sahai*, (1904) All. Weekly Notes, 46. *Sarju Misir* v. *Bindesri Pershad, 11 All. L. J. 691*, referred to. BHAWAN *v.* MADAN MOHAN LAL (1916).
I. L. R. 38 All. 533

AGREEMENT.

——— *Agreement to compound criminal case compoundable with leave of Court only if oppose to public policy—Offence not so compoundable alleged but no summons issued—Effect.* In a Criminal case the Magistrate after examining the complainant summoned the accused under s. 325, Penal Code, although allegations were made in the petition of complaint of an offence under s. 147, Penal Code, also. An agreement was entered into between the parties and with the leave of the Court the case was compromised. *Held*, that a case under s. 325, Penal Code, being compoundable with the leave of the Court and the Magistrate having given permission to compound the case, the contract was not opposed to public policy; the allegation in the petition of complaint of a non-compoundable offence under s. 147, Penal Code, which was not accepted by the Magistrate when issuing process made no difference. MAHAMMAD ISMAIL *v.* SAMAD ALI BHUIYAN (1915) . . **20 C. W. N. 946**

AGREEMENT TO SELL.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 54. **I. L. R. 39 Mad. 462**

AGRICULTURIST.

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S. 22.
I. L. R. 40 Bom. 194

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S. 72.
I. L. R. 40 Bom. 189

ALIEN ENEMY, SUIT AGAINST.

——— *If maintainable during the continuance of war—Internment, its object.* It does not matter whether the cause of action arose before or after the war, an alien enemy can be sued in our Courts and has every right to present his case before the Courts in accordance with the laws of procedure. *Halsey* v. *Lowenfeld* [*1916*] *1 K. B. 140*, followed. The fact that the defendant has been interned does not make any difference, as the object of internment is to prevent him from doing mischief and not to cut down his liabilities. ABDUL QUADER *v.* FRITZ KAPP (1916) . **I. L. R. 43 Calc. 1140**

ALIENATION.

See HINDU LAW—WIDOW.
I. L. R. 39 Mad. 1035

——— by Hindu widow—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 91. . **I. L. R. 40 Bom. 51**

——— of a share—

See HINDU LAW—JOINT FAMILY.
I. L. R. 39 Mad. 265

——— of emoluments of service inam—

See PROPRIETARY ESTATES VILLAGE SERVICE ACT (II OF 1894), SS. 5 AND 10, CL. (2) . **I. L. R. 39 Mad. 930**

——— of member's share—

See MALABAR LAW.
I. L. R. 39 Mad. 317

ALIMONY.

See DIVORCE ACT (IV OF 1869), SS. 3, 16, 37, 44. . **I. L. R. 40 Bom. 109**

See DIVORCE ACT (IV OF 1869), S. 37.
I. L. R. 38 All. 688

ALIYASANTANA LAW.

——— *Inheritance—Woman's self-acquisition—All the members of her branch, and not her nearest blood relation alone, heirs.* A female member in an Aliyasantana family died issueless leaving self-acquired property. There was no issue of her mother then living, and the only relations the deceased left behind her were her own deceased mother's sister and the issue of another sister of her mother. It being contended that the sole heir was the deceased's mother's sister as being the nearest relation to her, to the exclusion of the other members of the branch to which the deceased belonged at the time of her death : *Held*, that under the Aliyasantana law all the members of the nearest non-extinct branch to which the issueless deceased belonged at the time of her death (*viz.* her maternal grandmother's descendants), were entitled to succeed and not only one of them, *viz.*, her mother's sister, who is nearer in degree than others. *Antamma* v. *Kaveri, I. L. R. 7 Mad. 575*, referred to. MANJAPPA AJRI *v.* MARUDEVI HENGSU (1915)
I. L. R. 39 Mad. 12

ANCESTRAL PROPERTY.

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 66 . **I. L. R. 38 All. 481**

See MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT (II OF 1894), SS. 5, 10, CL. (2). . **I. L. R. 39 Mad. 730**

ANNUITY.

———— in Mysore Province—

See INCOME-TAX ACT (II OF 1886)
I. L. R. 39 Mad. 885

ANONYMOUS COMMUNICATION.

See UNPROFESSIONAL CONDUCT.
I. L. R. 43 Calc. 685

ANTICIPATORY BREACH.

See SALE OF GOODS.
I. L. R. 43 Calc. 305

APPEAL.

See AGRA TENANCY ACT (II OF 1901), SS. 58, 177 (*e*). I. L. R. 38 All. 465

See AGRA TENANCY ACT (II OF 1901), SS. 182, 183. . I. L. R. 38 All. 181

See CHOTA NAGPUR TENANCY ACT (BENG. VI OF 1908), SS. 87, 258, 264.
I. L. R. 43 Calc. 136

See CIVIL PROCEDURE CODE (1908), S. 104(*f*) . I. L. R. 38 All. 380

See CIVIL PROCEDURE CODE (1908) O. IX, R. 12. I. L. R. 38 All. 357

See CIVIL PROCEDURE CODE (1908), SCH. II, PARA. 21 ; O. XLIII, R. 1.
I. L. R. 38 All. 297

See COMPANIES ACT (VI OF 1882), S. 169.
I. L. R. 38 All. 537

See COMPROMISE I. L. R. 43 Calc. 85

See CONSOLIDATION OF APPEALS.

See CRIMINAL PROCEDURE CODE, S. 110.
I. L. R. 38 All. 393

See CRIMINAL PROCEDURE CODE, SS. 408, 413 . . I. L. R. 38 All. 395

See LAND ACQUISITION.
I. L. R. 43 Calc. 665

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), SS. 6, 8, 25, 38, 39 (2), (*a*), (*b*), (*c*), (*d*), (*f*), (*j*).
I. L. R. 40 Bom. 461

See SECURITY FOR COSTS.
I. L. R. 43 Calc. 243

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 88, 89.
I. L. R. 40 Bom. 321

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), S. 111 (*1*) (*b*).
I. L. R. 38 All. 70

———— against order of extension—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXIV, R. 8, PROVISO.
I. L. R. 39 Mad. 876

———— against the order of a single Judge—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 488.
I. L. R. 39 Mad. 472

APPEAL—*contd.*

———— by defendant—

See TITLE, SUIT FOR, DECLARATION OF
I. L. R. 38 All. 440

———— conversion of, into civil revision petition—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 46, CL. (*3*).
I. L. R. 39 Mad. 593

———— from order declining to arrest or attach property—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLIII, R. 1 (*r*); AND O. XXXIX, R. 2, CL. (*3*).
I. L. R. 39 Mad. 907

———— from order of a single Judge—

See LETTERS PATENT (MADRAS), S. 15.
I. L. R. 39 Mad. 235

———— out of time—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 46, CL. (*3*).
I. L. R. 39 Mad. 593

———— presentation of—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 421, 233, 537.
I. L. R. 39 Mad. 527

———— right of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 47, 73, 104.
I. L. R. 39 Mad. 570

———— service of notice of, on District Magistrate—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 439, 422, 423.
I. L. R. 39 Mad. 505

1. ———— *Consolidation of appeals—Plaint, amendment of, when allowable—Practice.* The Code of Civil Procedure contains no provisions for consolidating proceedings in India. Whether the Court has jurisdiction to consolidate proceedings or not, it would only do so where the consolidation is asked for before the trial of the suits begins or where the evidence given in the two cases is common in both of them. No amendment of plaint can be allowed where the proposed amendment would take away from the defendants, if allowed, a right that they would have if the plaintiffs had proceeded against them by way of original suit. JANARDAN KISHORE LAL *v.* SHIB PERSHAD RAM (1915) . . I. L. R. 43 Calc. 95

2. ———— *Order of Judge sitting on Original Side rejecting an application for an order to set aside dismissal of suit, whether appealable—Jurisdiction—Letters Patent, 1865 ss. 15, 44—"Judgment"—Civil Procedure Code (Act V of 1908) ss. 104, 117 : O. IX, rr. 8, 9 : O. XLIII, r. 1(c) : O. XLIX, r. 3.—Costs.* An appeal lies to the High Court in its Appellate Jurisdiction from an order made under Order IX, rule 9 of the Civil

APPEAL—*contd.*

Procedure Code, by a single Judge sitting on the Original Side of the High Court, rejecting an application for an order to set aside the dismissal of a suit. *Hurrish Chunder Chowdhry* v. *Kali Sunderi Debi, I. L. R. 9 Calc. 482, Gobinda Lal Das* v. *Shib Das Chatterjee, I. L. R., 33 Calc. 1323, Munsab Ali* v. *Nihal Chand, I. L. R. 15 All. 359, Brij Coomaree* v. *Ramrick Das, 5 C. W. N. 781, Toolsee Money Dassee* v. *Sudevi Dassee, I. L. R., 26 Calc. 361, The Justices of the Peace for Calcutta* v. *The Oriental Gas Co., 8 B. L. R. 433, Sonabai* v. *Ahmedbhai Habibhai, 9 Bom. H. C. 398, Hadjee Ismail Hadjee Hubbeeb* v. *Hadjee Mahomed Hadjee Joosub, 13 B. L. R. 91*, referred to. *Gobinda Lal* v. *Shib Das, I. L. R. 33 Calc. 1323*, dissented from by Mookerjee, J. The order of dismissal set aside and the suit restored by the Court of Appeal, subject to an order for costs. *Southampton, Isle of Wight, Portsmouth improved Steamboat Co.* v. *Rawlins, 34 L. J. Ch. 287, Michell* v. *Wilson, 25 W. R. 380, Birch* v. *Williams, 24 W. R. 700, Hall* v. *Lewis, 2 Keen 318, Muruga Chetty* v. *Rajasami, 22 Mad. L. J. 284, The Oriental Finance Corporation* v. *The Mercantile Credit and Finance Corporation, 2 Bom. H. C. 282*, and *Burgoine* v. *Taylor, L. R. 9 Ch. D. 1*, referred to by Mookerjee J. MATHURA SUNDARI DASI *v.* HARAN CHANDRA SAHA (1915)

I. L. R. 43 Calc. 857

3. ——— *Question of Fact—Weight to be given to the opinion of Trial Judge—Duty of Court of Appeal—Practice—Broker's Commission.* Decision of a Judge sitting on the Original Side decreeing a claim for commission reversed on appeal on questions of fact [SANDERSON, C.J. dissenting]. Principles guiding the Court of Appeal in dealing with the findings of fact arrived at by a Judge of the Court of first instance discussed. LALJE MAHOMED *v.* GUZDAR (1915).

I. L. R. 43 Calc. 833

4. ——— *Review—Civil Procedure Code (Act V of 1908) O. XLI, r. 11; O. XLVII, r. 4—Notice of review to respondents, if necessary —"Opposite Party"—Grounds of appeal, if restricted, on review—Bengal Tenancy Act (VIII of 1885) ss. 85, 159, 161—Sale in execution of a decree under Chap. XIV of that Act—Purchase by a stranger—Meaning of "encumbrances" in s. 161 of the Bengal Tenancy Act.* Where an appeal was summarily dismissed by a Divisional Bench of this Court and such order was ultimately set aside on review by the said Bench on an *ex parte* application without notice to the respondents :—*Held*, that the last order was valid even in the absence of such notice. *Joy Kumar Dutt Jha* v. *Eshree Nand Dutt Jha, 16 W. R. 475, Haladhar Jha* v. *Syed Shah Mahomed, 25 Ind. Cas. 880*, followed. *Abdul Hakim Chowdhury* v. *Hem Chandra Das, I. L. R. 42 Calc. 433*, dissented from. The expression "opposite party" in O. XLVII, r. 4 of the Civil Procedure Code means the party interested to support the order sought to be vacated or modified upon the application for review. After an appeal is allowed under O. XLI, r. 12, after review, the appellants are not restricted to the single ground for appeal which was the basis for review, but the whole appeal is before the Court when the case is taken up for final disposal. *Lukhi Narain* v. *Sri Ram Chandra, 15 C. W. N. 921*, followed. The rights of a stranger who purchases at a sale in execution of a decree under Chapter XIV of the Bengal Tenancy Act, are regulated by s. 159 and not by s. 85 of that Act. The word "encumbrances" in s. 161 of that Act, includes the interests of an under-raiyat. JANAKI NATH HORE *v.* PRABHASINI DASEE (1915)

I. L. R. 43 Calc. 178

5. ——— *Death of one of the respondents—Decree passed in ignorance of appellant not entitled to rehearing.* The death of one of the defendants or respondents does not abate a suit or appeal. *Duke* v. *Davies, [1890] 2 Q. B. 260*, referred to. An unsuccessful litigant has no right, therefore, to argue his case more than once merely on the ground that one of the other parties to the proceeding was dead at the time of the hearing. *Dictum* in *Goda Coopooramier* v. *Soondarammal, I. L. R. 36 Mad. 167*, approved. VELLAYAN CHETTY *v.* MAHALINGA AIYAR (1914)

I. L. R. 39 Mad. 386

APPEAL TO PRIVY COUNCIL.

See CIVIL PROCEDURE CODE (1908), s. 109.

I. L. R. 38 All. 150

See CIVIL PROCEDURE CODE (1908), s. 109.

I. L. R. 38 All. 188

See CIVIL PROCEDURE CODE (1908), s. 110.

I. L. R. 38 All. 488

See LEAVE TO APPEAL TO PRIVY COUNCIL.

See LIMITATION ACT (IX OF 1908) S. 12 ; SCH. I, ART. 179.

I. L. R. 38 All. 82

——— **mode of valuation for—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 110.

I. L. R. 39 Mad. 843

——— *Power of the High Court to give leave—Letters Patent, Madras, cls. 10 and 39—Disciplinary proceedings under clause 10 — Right to give leave to appeal to Privy Council.* Disciplinary proceedings under clause 10 of the Letters Patent are not appealable under clause 39 ; and the High Court has no power to give leave to appeal to the Privy Council from an order passed in the exercise of such jurisdiction. *In re an Attorney, I. L. R. 41 Calc. 734*, followed. *G. S. D.* v. *Government Pleader, I. L. R. 32 Bom. 106*, and *Tetley* v. *Jai Shankar, I. L. R. 1 All. 726*, referred to. *In re S. B. Sarbadhicary, 34 I. A. 41*, explained. RAMACHANDRA AYYAR *v.* THE PRESIDENT OF THE VAKILS' ASSOCIATION, HIGH COURT, MADRAS (1914). **I. L. R. 39 Mad. 128**

APPEARANCE.

See FOREIGN DECREE, EXECUTION OF

I. L. R. 39 Mad. 24

APPELLATE SIDE RULES.

——— R. (1) (b)—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 421, 233, 537.
I. L. R. 39 Mad. 527

APPLICATION.

——— to a wrong Court—

See INSOLVENCY, PROCEEDINGS IN
I. L. R. 39 Mad. 74

APPORTIONMENT OF RENT.

See RENT, SUIT FOR
I. L. R. 43 Calc. 554

ARBITRATION.

See ARBITRATION IN LONDON.

See CIVIL PROCEDURE CODE (1908), S. 104 (*f*). . . **I. L. R. 38 All. 380**

See CIVIL PROCEEDURE CODE (ACT V OF 1908), O. XXXII, R. 7.
I. L. R. 39 Mad. 853

See CIVIL PROCEDURE CODE (1908). SCH. II, CLS. 17, 20 **I. L. R. 38 All. 85**

See CIVIL PROCEDURE CODE (1908), SCH. II, PARA. 21 ; O. XLIII, R. 1.
I. L. R. 38 All. 297

1. ——— *Application of parties to Court for reference of suit to arbitration—Omission of guardian of minor party to sign application—Civil Procedure Code, 1908, ss. 114, 115, 121 and O. XLVII (1) ; Sch. II, ss. 1, 15 and 16 (1) (2)—Ground for setting aside award—Reversal by Officating Chief Commissioner on review or order of Chief Commissioner refusing revision. Finality of decree on award. Held,* that Sch. II, s. 1 of the Civil Procedure Code, 1908, which provides that where the parties to a suit have agreed that the matter in difference shall be referred to arbitration they may apply in writing to the Court for an order of reference, does not require that the writing should necessarily be signed ; and where the guardian *ad litem* of a minor party was in Court and assented to the application, the omission of the guardian to sign it was immaterial. *Held,* also, (allowing the appeal) that in this case there was no defect on the face of the award, nor any misconduct of the arbitrators or umpire, nor any concealment of facts by any of the parties which would bring the case within those provisions in Sch. II which might enable the Court to set it aside ; and that the Officiating Chief Commissioner was, therefore, not justified in interfering in review with an order made by the Chief Commissioner refusing revision. UMED SINGH *v.* SETH SOBHAG MAL DHADHA (1915) . . . **I. L. R. 43 Calc. 290**

2. ——— *Arbitration and award by Bengal Chamber of Commerce—Jurisdiction—Broker liable as principal—Custom and usage of Calcutta Gunny Market—S. 92, Prov. (5), Indian Evidence Act (I of 1872)—Evidence of custom or usage incidental to contract—Indian Contract Act (IX of 1872), ss. 230 and 236.* An award made by

ARBITRATION—*concld.*

the Bengal Chamber of Commerce was sought to be set aside by defendants in Court on the ground that the Chamber acted in excess of jurisdiction in having made the award in favour of the plaintiffs disregarding the fact that the contract in question was made by plaintiffs as brokers although in fact the plaintiffs had no principals and the contract was not therefore enforceable. The plaintiffs alleged that there was a custom in the market in respect of gunny, hessian and manufactured jute goods by which brokers are held liable upon such contracts and such custom being well-known to the Chamber, the award was properly made and valid. The Court allowed evidence of custom and usage to be given and held that there was such a custom and that the defendants knew of it. *Patiram Banerjee* v. *Kankinara Co., Ld., 19 C. W. N. 623,* distinguished. *Held,* that ss. 230 and 236 of the Indian Contract Act, the former of which deals with undisclosed principal and the latter with falsely contracting as agent, were not applicable to this case. *Held,* also, that evidence of usage of trade applicable to the contract which the parties making it knew, or may be reasonably presumed to have known, is admissible for the purpose of importing terms into the contract, respecting which the instrument itself is silent *Fleet* v. *Murton, L. R. 7 Q. B. 126,* followed. That the usage being known to the Chamber the matter was within their jurisdiction and the award was properly made. JOY LAL & Co. *v.* MONMOTHA NATH MULLIK (1916) **20 C. W. N. 365**

ARBITRATION ACT (IX OF 1899).

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 89 ; O. XXIII, R. 3.
I. L. R. 40 Bom. 386

ARBITRATION IN LONDON.

See CONTRACT. **I. L. R. 43 Calc. 77**

ARBITRATOR.

——— duties of—

See CIVIL PROCEDURE CODE (1908), S. 104 (*f*) . **I. L. R. 38 All. 380**

ARMS.

——— purchase of—

See FORGERY . **I. L. R. 43 Calc. 421**

ARREST.

See PENAL CODE (ACT XLV OF 1860), S. 255B . **I. L. R. 38 All. 506**

See RESCUE FROM LAWFUL CUSTODY
I. L. R. 43 Calc. 1161

——— order declining to—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLIII, R. 1(*r*) AND O. XXXIX, R. 2, CL. (*3*).
I. L. R. 39 Mad. 907

ASSAM LAND AND REVENUE REGULATION (I OF 1886).

——— s. 28, provisos 2 and 4—

See ASSESSMENT.
I. L. R. 43 Calc. 973

——— ss. 70, 71—

See SALE FOR ARREARS OF REVENUE.
I. L. R. 43 Calc. 779

ASSESSMENT.

See SARANJAM **I. L. R. 40 Bom. 606**

——— penal, levy of—

See MADRAS LAND ENCROACHMENT ACT (III OF 1905), SS. 5, 6, 7, 14.
I. L. R. 39 Mad. 727

——— *Sovereign right—Limitation—Resumption—Right of Government to assess revenue on land alleged to be lakheraj—Divesting of such right, effect of—Bengal Regulation (II of 1805), s. 2, sub-s. (2)—Assam Regulation (I of 1886), s. 28, provisos 2 and 4—Legislation when retrospective.* Though the Government's right to assess land revenue is a sovereign right and hence not subject to the Statute of Limitation under ordinary circumstances, there is nothing to prevent the Government from divesting itself of such right by making regulations for assessment and collection of revenue which might under certain circumstances give exemption from assessment of land revenue. *Boddupalli Jagannadham* v. *The Secretary of State for India, I. L. R. 27 Mad. 16,* distinguished. The effect of proviso 4 to s. 28 of the Assam Regulation (I of 1886), which is based on s. 2 of the Bengal Regulation (II of 1805), is to exempt land from assessment if the owner can prove 60 years' possession of it without payment of any revenue during that period and thus to introduce the rule of 60 years' limitation. Proviso 2 of that Regulation merely authorises assessment of lands excepted from the Permanent Settlement if they do not fall under any of the saving clauses. A statute is not retrospective simply because a part of the requisites for its action is drawn from a time antecedent to its passing. *Queen* v. *St. Mary Whitechapel, 12 Q. B. 120,* followed. ANANDA KUMAR BHATTACHARJEE *v.* SECRETARY OF STATE FOR INDIA (1916) . . **I. L. R. 43 Calc. 973**

ASSIGNEE.

——— from subscriber to kuri—

See SPECIFIC RELIEF ACT (I OF 1877) S. 42. . . **I. L. R. 39 Mad. 80**

——— rights of—

See SUCCESSION CERTIFICATE ACT (VII OF 1889), S. 4. . **I. L. R. 38 All. 474**

ASSIGNMENT OF DEBT.

——— by holder of letters of administration—

See SUCCESSION CERTIFICATE ACT (VII OF 1889), S. 4.
I. L. R. 38 All. 474

ATTACHING CREDITOR.

See ATTORNEY'S LIEN FOR COSTS.
I. L. R. 43 Calc. 932

——— withdrawal by—

See DEPOSIT IN COURT.
I. L. R. 43 Calc. 269

ATTACHMENT.

See AGRA TENANCY ACT (II OF 1901), S. 124 . . **I. L. R. 38 All. 40**

See ATTACHMENT BEFORE JUDGMENT.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, RR. 46, 54.
I. L. R. 39 Mad. 389

——— cancelling of—

See COURT FEES ACT (VII OF 1870), SCH. II, ART. 17. **I. L. R. 39 Mad. 602**

——— for arrears of revenue—

See CONTRACT ACT (IX OF 1872), SS. 69 AND 70 . **I. L. R. 39 Mad. 795**

——— of property in window's hands—

See HINDU LAW—WIDOW
I. L. R. 39 Mad. 565

ATTACHMENT BEFORE JUDGMENT.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXVIII, R. 5.
I. L. R. 39 Mad. 903

——— *Maliciously procuring of an order for—No right of suit for damages therefor.* Procuring an order for attachment before judgment, however maliciously, does not of itself afford a cause of action for damages, as damage does not necessarily and naturally flow from an application for attachment before judgment. *Semble:* Petitions for adjudications in bankruptcy and for winding up of companies stand on a different footing. RAMA AYYAR *v* GOVINDA PILLAI (1915)
I. L. R. 39 Mad. 952

ATTESTATION.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 59 . **I. L. R. 38 All. 461**

ATTORNEY.

See ATTORNEY'S LIEN FOR COSTS.

1. ——— *Admission by attorney if binds client.* An admission by an attorney, unless satisfactorily explained away, furnishes cogent evidence against the client. KETOKEY CHURAN BANERJEE *v.* SARAT KUMARI DABEE (1916)
20 C. W. N. 995

2. ——— *Application by attorney for discharge—Notice to client, sufficiency of.* If an attorney wishes to withdraw from a case even for good grounds, he must give his client reasonable notice of his intention so that the client may have a reasonable opportunity of getting other advice and making arrangements before the hearing of the application of the attorney for obtaining his discharge. When an attorney gave notice to the client on the day previous to his making application before Court for obtaining his

ATTORNEY—*concld.*

discharge and obtained the order: *Held*, on appeal, that the order must be set aside for insufficiency of notice. PRABHU LAL *v.* KUMAR KRISHNA DUTT (1916) . . **20 C. W. N. 443**

3. ——— *Attorney discharging himself, if may detain clients' papers, pending suit—Lien in such case how secured—When discharged by client, except for misconduct, if may detain papers.* Sanderson, C. J. (Woodroffe J. agreeing). Where an attorney, who had been acting for his client in the ordinary way, refused to go on acting for him unless his out-of-pocket expenses were paid, that amounted to a discharge of the attorney by himself and he could not claim to retain the papers when they were wanted by his former client for continuing the litigation. He would, at most, be entitled to have his lien protected by an undertaking by the new attorney. The same rule would apply where it was part of the original retainer of the solicitor that he should only be bound to act as long as the money should be supplied from time to time for the necessary out-goings. *Bluck* v. *Lovering & Co., 35 W. R. 232*, and *Robins* v. *Goldingham, L. R. 13 Eq. 440 ; 22 W. R. 277*, followed. Mookerjee, J. If a solicitor is discharged by his clients, otherwise than for misconduct, he cannot, so long as his costs are unpaid, be compelled to produce or hand over the papers ; but if he discharges himself he may be ordered to hand over the papers to the new solicitor on the latter undertaking to hold them without prejudice to his lien. A solicitor could not be treated as finally discharged till the leave of the Court had been obtained. *Atul Chandra Ghosh* v. *Lakshman Chandra Sen, I. L. R. 36 Calc. 609*, PRABHU LAL v. KUMAR KRISHNA DUTT (1916) **20 C. W. N. 437**

ATTORNEY'S LIEN FOR COSTS.

——— *Practice — Set-off — Attaching creditors.* Where on an application by the defendant that satisfaction of a decree obtained against them by the plaintiff should be entered by setting-off a decree upon an award in their favour against the plaintiff, it appeared that a prohibitory order had been made against the plaintiff in execution of a decree obtained by a third party, and the attorney for the plaintiff claimed a lien for costs on such decree : *Held*, that the defendants' application to set-off was proper, but that this was not a case in which the Court ought to hold that the solicitor's lien intercepts the set-off claimed. *Edwards* v. *Hope, 14 Q. B. D. 922*, *Blakey* v. *Latham, 41 Ch. D. 518*, *Nawab Nazim of Bengal* v. *Heera Lall Seal, 10 B. L. R. 444*, *Supramanyan Setty* v. *Hurry Froo Mug, I. L. R. 14 Calc. 374*, *Calliangi Sanjibhoy* v. *Raghawjee Vijpal, 6 Bom. L. R. 879*, and *Goodfellow* v. *Bray*, [*1899*] *2 Q. B. 498*, referred to. BHUPENDRA NATH BHOSE *v.* E. D. SASOON & Co. (1916) **I. L. R. 43 Calc. 932**

AUCTION SALE.

See BENAMI PURCHASER.
I. L. R. 43 Calc. 20

AWARD.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 89, O. XXIII, R. 3.
I. L. R. 40 Bom. 386

——— **application to file—**

See CIVIL PROCEDURE CODE (1908), S. 104 (*f*). . **I. L. R. 38 All. 380**

AWARD-DECREE.

——— **validity of—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXII, R. 7.
I. L. R. 39 Mad. 853

B

BAILABLE OFFENCE.

——— *Information to village Magistrate—Report to the police—Institution of complaint by police thereon.* A man who complains to a village Magistrate of a bailable offence knowing that the latter must in the ordinary course of his duty report the substance of the complaint to the police gives information to the police just as effectively as if he went in person to the police station and made a complaint ; and if the police charge the case, it is a case instituted on information given to a police officer within the meaning of section 250, Criminal Procedure Code. *The Sessions Judge of Tinnevelly* v. *Sivan Chetti, I. L. R. 32 Mad. 258*, followed. NACHIMUTHU CHETTI v. MUTHUSAMI CHETTI (1914). **I. L. R. 39 Mad. 1006**

BAILOR AND BAILEE.

See PARTNERSHIP **I. L. R. 43 Calc. 733**

BALANCE OF MORTGAGE-MONEY.

——— **suit for—**

See SPECIFIC PERFORMANCE.
I. L. R. 43 Calc. 59

BANDHU.

See HINDU LAW—SUCCESSION.
I. L. R. 38 All. 416

BARODA-COURT DECREE.

See DECREE . **I. L. R. 40 Bom. 504**

BELCHAMBERS' RULES AND ORDERS.

——— **r. 370—**

See REVIVOR . **I. L. R. 43 Calc. 903**

BENAMI PURCHASE.

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1789)
I. L. R. 40 Bom. 483

BENAMI PURCHASER.

——— *Auction sale—Civil Procedure Code (Act V of 1908), s. 66—Object of the section.* S. 66 of the Code of Civil Procedure, 1908,

BENAMI PURCHASER—*concld.*

lays down that no suit shall be maintained against any person claiming title under a purchase certified by the Court, on the ground that the purchase was made on behalf of the plaintiff or some one through whom the plaintiff claims. The section is clearly aimed at *benami* purchases at execution sales. The clear intention of the section is to stop *benami* purchases by making it impossible for the real owner to question the *benamidar's* title. *Bhishan Dial* v. *Ghazi-ud-din, I. L. R. 23 All. 175*, referred to. *Sasti Churn Nundi* v. *Annopurna, I. L. R. 23 Calc. 699*, doubted. HANUMAN PERSHAD THAKUR *v.* JADU NANDAN THAKUR (1915) **I. L. R. 43 Calc. 20**

BENAMI TRANSACTION.

See SECOND APPEAL **I. L. R. 38 All. 122**

BENAMIDAR.

——— *Partition—Joint immovable property, suit for partition of.* A *benamidar* cannot maintain a suit for partition of joint immovable property. *Basi Poddar* v. *Ram Krishna, 1 C. W. N., 135, Baburam* v. *Ram Sahai, 8 C. L. J. 305, Sreenath Nag* v. *Chundernath Ghose, 17 W. R. 192, Bhoobunessur Roy* v. *Juggessuree, 22 W. R. 413, Sachitananda* v. *Baloram, I. L. R. 24 Calc. 644, Hara Gobinda Saha* v. *Purna Chandra Saha, 11 C. L. J. 47, Alikjan Bibi* v. *Rambaran, 12 C. L. J. 357, Kirtibas v. Gopal Jiu, 19 C. L. J. 193, Meherononissa* v. *Hur Churn, 10 W. R. 220, Fuzeelun* v. *Omdah, 11 B. L. R. 60 note, Kally Prosonno* v. *Dinonath, 1 B. L. R. 56, Tamaoonissa* v. *Woojjulmonee, 20 W. R. 72, Hari Gobind Adhikari* v. *Akhoy Kumar, I. L. R. 16 Calc. 364, Issur Chandra* v. *Gopal Chandra, I. L. R. 25 Calc. 98, Baroda* v. *Dino Bandhu, I. L. R. 25 Calc. 874, Mohendra Nath Mukerjee* v. *Kali Proshad Johuri, I. L. R. 30 Calc. 265, Kuthaperumal* v. *Secretary of State, I. L. R. 30 Mad. 245 ; Venkatachala* v. *Subramania, 8 Mad. Law Times 377, Dagdu* v. *Balvant, I. L. R. 22 Bom. 820, Ravji* v. *Mahadev, I. L. R. 22 Bom. 672, Nand Kishore Lall* v. *Ahmed Ata, I. L. R. 18 All. 69, Yad Ram* v. *Umrao Singh, I. L. R. 21 All. 380, Donzelle* v. *Kedarnath, 7 B. L. R. 720 ; 16 W. R. 186, Kedarnath* v. *Donzell, 20 W. R. 352, Indurbuttee* v. *Mahboob, 24 W. R. 44, Joynarain* v. *Kadambini, 7 B. L. R. 723 note, Purnia* v. *Torab, 3 Wyman's Rep. 36, Bogar* v. *Karan Singh, 2 P. W. R. 26, Basiruddin* v. *Mahomed, 12 C. W. N. 409, Ram Bhurosee* v. *Bissesser, 18 W. R. 454, Sita Nath* v. *Nobin Chunder, 5 C. L. R. 102, Gopi Nath* v. *Bhugwat Pershad, I. L. R. 10 Calc. 697*, and *Bhola Pershad* v. *Ram Lall, I. L. R. 24 Calc. 34*, referred to. ATRABANNESSA BIBI. *v.* SAFATULLAH MIA, (1915) . . **I. L. R. 43 Calc. 504**

BENGAL ACTS.

——— **1870—VI.**

See CHAUKIDARI CHAKRAN LANDS ACT.

——— **1879—IX.**

See COURT OF WARDS ACT, BENGAL.

BENGAL ACTS—*concld.*

——— **1884—III.**

See BENGAL MUNICIPAL ACT.

——— **1897—V.**

See ESTATES PARTITION ACT, BENGAL.

——— **1908—VI.**

See CHOTA NAGPUR TENANCY ACT.

——— **1911—V.**

See CALCUTTA IMPROVEMENT ACT.

BENGAL CHAMBER OF COMMERCE.

——— **arbitration by—**

See ARBITRATION . **20 C. W. N. 365**

BENGAL DISTRICT GAZETTEER.

——— **reference to—**

See SIMANADARS **I. L. R. 43 Calc. 227**

BENGAL MUNICIPAL ACT (BENG. III OF 1884).

——— **ss. 30, 31—**

See MUNICIPALITY **I. L. R. 43 Calc. 130**

——— **ss. 44, 45, 271, 230, 353**—*Order or consent of Commissioners necessary for prosecution under the Act—Power of Chairman to give such order or consent on behalf of the Commissioners—Vice-Chairman, exercise by, of powers of Chairman—Consent of Chairman subsequently obtained, validating effect of.* The accused was prosecuted under s. 271 of the Bengal Municipal Act for disobeying a requisition under s. 230. The report of the offence was made by the Outdoor Inspector, and it was submitted to the District Magistrate by the Chairman with a recommendation to prosecute the accused. The Inspector appeared before the Magistrate and was examined as the complainant. The document which was submitted by the Chairman to the Magistrate bore an eight-anna stamp. It further appeared that the notice against the accused was issued on the authority of the Vice-Chairman. There was no written order of delegation of duties or powers by the Chairman to the Vice-Chairman which could cover this order made by the Vice-Chairman. *Held*, that because the report of the offence made by the Inspector which was submitted by the Chairman to the District Magistrate bore an eight-anna stamp, it did not follow that it must be regarded as a petition of complaint and that the Chairman was merely in the position of a complainant. That the order or consent of the Commissioners necessary under s. 353 for the institution of a prosecution under the Act is an order or consent by the Chairman as representing the Commissioners which the Chairman can give under s. 44. That in the present case the order of the Chairman was an order or consent in writing by the Chairman within the meaning of s. 353 and was sufficient. That it being clear that the act of the Vice-Chairman was done with the express consent of the Chairman subsequently obtained, the case was covered by the

BENGAL MUNICIPAL ACT (BENG. III OF 1884)—*concld.*

——— **ss. 44, 45**—*concld.*

proviso to s. 45. CHAIRMAN OF HUGLI-CHINSURA MUNICIPALITY *v.* KRISTO LAL MULLICK (1916) **20 C. W. N. 824**

——— **s. 345**—It is necessary for a conviction under s. 345 of the Bengal Municipal Act to prove that the Magistrate on the application of the Commissioners had ordered the land to be closed as a market-place and had taken order to prevent such land being so used. PUTI KABARINI *v.* VICE-CHAIRMAN, BERHAMPUR MUNICIPALITY (1916) **20 C. W. N. 1015**

BENGAL REGULATIONS.

——— **1805—II.**

——— **s. 2 (2)—**

See ASSESSMENT **I. L. R. 43 Calc. 973**

——— **1829—X.**

See EVIDENCE **I. L. R. 38 All. 494**

BENGAL TENANCY ACT (VIII OF 1885).

——— **s. 1**—*Land in suburb of Calcutta let out in 1898 for 5 years—Lessee holding on till sued in ejectment in 1910—Status of lessee, non-occupancy raiyat—"Town of Calcutta," extension of, by amending Act—Limitation—Bengal Tenancy Act, Sch. III, Art. 1 (a).* Defendant on 16th December 1898 took a five years' lease from plaintiff of an agricultural holding situated within the present Municipal limits of Calcutta but beyond the limits of the town of Calcutta as determined by the proclamation of the Governor General in Council, dated the 10th September 1794, issued under s. 159 of statute 33, Geo. III, c. 52. Plaintiff on 9th November 1910 having sued to eject the defendant: *Held*, that until the Bengal Tenancy Amendment Act of 1907 came into force, the Bengal Tenancy Act applied to the case and defendant had in consequence acquired the status of a non-occupancy raiyat when the Amendment Act came into force, and this status was not affected by the provisions of s. 3 of the Amendment Act which gave a new definition of the expression "Town of Calcutta" as used in s. 1 of the Bengal Tenancy Act, making it co-extensive in area with the present municipal limits of Calcutta. The explanation added to sub-s. (*3*) of s. 1 of the Bengal Tenancy Act by s. 3 of Act I, B. C. of 1907 is an amending statute and not merely one of a declaratory character and cannot therefore be given re-trospective operation. *Held*, that the suit was barred by Art. 1 (*a*) to Sch. III of the Bengal Tenancy Act. JOTIRAM KHAN *v.* JONAKI NATH GHOSE (1914) . . **20 C. W. N. 258**

——— **ss. 6, 7**—*Rent, enhancement of—Part of tenure created before Permanent Settlement but separated by assignment and held at proportional rent by assignee—Confirmatory sanad if creates new tenure.* When a part of a tenure existing at the date of the Permanent Settlement was assigned subject to confirmation by the landlord, a *sanad* granted by the land-lord in favour of the assignee confirming the transfer and allowing the assignee to hold his purchased share on payment of a proportionate share of the original rent did not create a new tenure, and the rent payable was not liable to enhancement except in the circumstances specified in clauses (*a*) and (*b*) to sec. 6 of the Bengal Tenancy Act. MOOKERJEE J. It is well settled that the continuity of transferable tenure is not affected by sub-division or by consolidation. *Udoy Chandra Karji* v. *Nripendra Narayan Bhup, I. L. R. 36 Calc. 287: s. c. 13 C. W. N. 410*, commented on. CHANDRA KANTA CHAKRABARTI *v.* RAM KRISHNA MAHALANABISH (1916) **20 C. W. N. 1002**

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **ss. 6, 7**—*concld.*

——— **s. 12**—*Amending Act I, B. C., of 1905—Portion of tenure, sale of, by registered instrument—Non-payment of landlord's fee—Title, if passes—Purchaser allowing vender to represent him to landlord—Effect on rent sale.* The transfer of a portion of a tenure was complete upon registration although the landlord's fee was not paid and no notice of the transfer was given to him. *Kristo Bulluv Ghose* v. *Kristo Lal Singh, I. L. R. 16 Calc. 642, Chintamoni Dutt* v. *Rash Behary Mondal, I. L. R. 19 Calc. 17, Hemendra Nath Mukerjee* v. *Kumar Nath Roy, 12 C. W. N. 478*, and *Girish Chandra Guha* v. *Khagendra Nath Chatterjee, 16 C. W. N. 64*, relied on. But where the purchaser subsequent to his purchase allowed his vendor to represent him before the landlord, paying rent in the latter's name, the landlord was entitled to frame his suit for rent without impleading the purchaser, and the sale in execution of the decree obtained therein passed the entire tenure. ALI MAHAMUD *v.* AFTAHUDDIN BHUYA (1915) . **20 C. W. N. 355**

——— **s. 22**—*Thika taken by a cultivating raiyat—Conversion into tenure-holder—Merger—Liability to eviction after expiry of the period of thika—Construction of lease.* A *thikadar* is liable to eviction after the expiry of the period of his lease, even though it is found that he was a cultivating raiyat with respect to the lands of which he took the *thika* prior to it. His interests as a raiyat became merged into the rights he acquired under the lease. MANNERS *v.* SATROGHAN DAS (1916) **20 C. W. N. 800**

——— **ss. 22 (2), 49, 85, 167—**

See LANDLORD AND TENANT. **I. L. R. 43 Calc. 164**

——— **s. 38, cl. (1), (a)**—*Permanent deterioration, what is.* The word "permanent" in s. 38 of the Bengal Tenancy Act must in every case be construed with reference to existing conditions and when a piece of land gets covered with sand the deterioration is permanent with reference to existing conditions. *Gouri Patra* v. *H. R. Reily, I. L. R. 20 Calc. 579, 586*, followed. KRISHNA SAHAY *v.* PALAKDHARI ROUT (1915) **20 C. W. N. 1157**

——— **ss. 49, 85**—*Under-raiyati lease for a term under nine years, if heritable on death of tenant:*

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **ss. 49, 85**—*concld.*

within term. A sub-lease granted by a raiyat for a term not exceeding nine years carries with it the ordinary incidents of a lease for a term of years—one of such incidents being that if the lessee dies before the end of the term, his heirs are entitled to succeed him in the tenancy. *Midnapore Zamindary Company* v. *Hrishikesh Ghose, I. L. R. 41 Calc. 1108 s. c. 18 C. W. N. 828, Arip Mondal* v. *Ram Ratan Mondal, I. L. R. 31 Calc. 757 : s. c. 8 C. W. N. 479,* and *Jamini Sundari Dasi* v. *Rajendra Nath Chakerbutty, 11 C.W. N. 519,* referred to. ABJAN BIBI *v.* RAHAM ALI (1915) **20 C. W. N. 756**

——— **s. 85**—*Under-raiyati lease for 9 years with covenant of renewal, if valid—Ejectment, suit for, at termination of term.* Notwithstanding the provisions of s. 85 of the Bengal Tenancy Act, a stipulation in a lease granted by a raiyat to an under-raiyat that after the expiry of the nine years for which the lease was granted, the raiyat would grant the under-raiyat a fresh lease of the land is valid. *Ali Mahomed* v. *Nayan Rajah, 15 C. L. J. 122,* followed. *Abdul Karim* v. *Abdul Rahaman, 15 C. L. J. 672,* s. c. *16 C. W. N. 618,* referred to. When there is a covenant for renewal if the option does not state the terms of the renewal the new lease would be for the same period and on the same terms as the original lease in respect of all the essential conditions thereof except as to the covenant for renewal itself. If it is possible to interpret an agreement between the parties so as to make it operative, effect should be given to it and the contract should not be pronounced unenforceable : *Held,* that the only reasonable interpretation of the covenant in this case was that the parties agreed that the lease would be renewed on the same terms and for the same period as the original lease. LANI MIA *v.* MUHAMMAD EASIN MEA (1915). . . . **20 C. W. N. 948**

——— **s. 85** (*2*)—

1. ——— *If excludes operation of rules of equity in the relation of landlord and tenant.* The Bengal Tenancy Act is not a complete Code, even in respect of the law of landlord and tenant ; much less does it profess to incorporate the general principles of the law of contract and the doctrines of equity jurisprudence in so far as they may have to be applied in the determination of disputes between landlords and tenants. BAMANDAS BHATTACHARYYA *v.* NILMADHAB SAHA (1916) **20 C. W. N. 1340**

2. ——— *Under-raiyati lease for a term exceeding 9 years, if void—Objection by trespasser—Oral evidence and admission by the raiyat, if admissible to prove tenancy—Prior possession as tenant.—Putra-poutradikramay, meaning of.* Where an under-raiyat by virtue of a registered sub-lease created in his favour by a raiyat for a term described as "*putra-poutradikramay*" sued the defendants for ejectment on the ground that they were trespassers and he also sought to prove his tenancy, irrespective of the lease, by an admission of the raiyat that he granted the lease to the plaintiff and took *selami* from him and that plaintiff obtained possession of the remainder of the land covered by the lease : *Held,* that plaintiff's lease was for a term exceeding 9 years and as such it was not admissible in evidence and did not create any title in the plaintiff. *Jarip Khan* v. *Dorfa Bewa, 17 C. W. N. 59,* followed. *Held,* that the admission of the raiyat, being evidence relating to the transaction of the lease in respect of which there was a document, was not admissible in evidence and possession by plaintiff of other land covered by the lease, even if proved, was not sufficient to prove plaintiff's tenancy in the land in suit. *Held,* further, that having regard to the expression "*putra-poutradikramay*" the *patta* granted to the plaintiff was perpetual lease. KARTICK MANDAL *v.* BAMA CHARAN MANDAL (1915) **20 C. W. N. 182**

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **s. 85** (*2*)—*concld.*

——— **ss. 85, 159, 161**—

See APPEAL . **I. L. R. 43 Calc. 178**

——— **s. 93**—

See COMMON MANAGER . **I. L. R. 43 Calc. 986**

——— **s. 102**—*Its amendment in 1898—Effect of s. 102—Settlement Officer, power of.* S. 102 of the Bengal Tenancy Act has now been amended by the insertion of a new clause which expressly authorises the Settlement Officer to decide when the land is claimed to be held rent-free—whether or not rent is actually paid, and if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and if so entitled under what authority. The very circumstance that the Legislature has inserted this clause in s. 102 points to the conclusion that the matter provided for thereunder is not covered by the other clause of s. 102. The Legislature could not possibly have intended to accord finality to a decision of a dispute by a Settlement Officer which it was beyond the jurisdiction of the Revenue Officer to decide under s. 106 of the Bengal Tenancy Act. *Radha Kishore* v. *Durganath, I. L. R. 32 Calc. 162, Donay Dass* v. *Keshub Pruhti, 8 C. W. N. 741, Nabin Chandra* v. *Radha Kishore, 11 C. W. N. 859, Nikunja Behary* v. *Radha Kishore, 22 C. L. J. 148, Secretary of State for India* v. *Nitye Singh, I. L. R. 21 Calc. 38, Dharani Kanta Lahiri* v. *Gaber Ali Khan, I. L. R. 30 Calc. 339, Karmi Khan* v. *Brojo Nath Das, I. L. R. 22 Calc. 244,* and *Birendra* v. *Bhoirab, 20 C. L. J. 295,* referred to. BIRENDRA KISHORE MANIKYA *v.* KALITARA DEBI (1915) **I. L. R. 43 Calc. 547**

——— **ss. 105A** (*4*), **106, 109A.**—

See SECOND APPEAL

I. L. R. 43 Calc. 603

——— **s. 120** (*2*) (*a*)—*Land let out to tenant claimed as zerait—Tenant's admission in kabuliyat if admissible.* The new sub-s. (2) (a), to s. 120 which shows that " any other evidence that may

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— s. 120—*concld.*

be produced " does not include an agreement or a compromise between the landlord and the tenant. Confirms the view taken in the case of *Sher Bahadur* v. *Mackenzie, 7 C. W. N. 400*, that a statement made in a *kabuliyat* executed after the 2nd March 1883 that the land is *zeriat* was not admissible, not on the ground that it was not included in the expression " any other evidence that may be produced " but for the reason that when the Legislature expressly made evidence of letting before the 2nd March 1883 admissible in proof of the character of the land, they must be intended to exclude evidence of letting after the 2nd March 1883. Where therefore the only evidence to prove that land let out for a term of seven years expiring on 4th June 1909 was *zerait* was a recital to the effect in the *kabuliyat*, dated the 19th September 1902: *Held*, that the recital was no evidence of the alleged *zerait* character of the land. *Nilmoney Chakarburty* v. *Bykant Nath Bera, I. L. R. 17 Calc. 466, Ajodhya Prosad* v. *Ram Golam, 13 C. W. N. 661, Bhagtu Singh* v. *Raghunath. 13 C. W. N. 994: s. c. 9 C. L. J. 15*, and *Masudan Singh* v. *Goodar Nath Pandey, 1 C. L. J. 456*, referred to. GANPAT MAHTON *v.* RISHAL SINGH (1914) . . **20 C. W. N. 14**

——— s. 153—

1. ——— *Question of title raised but not decided by Munsif exercising final Juridiction—Appeal to District Judge, if lies—District Judge deciding question of title in appeal—second appeal, if lies.* In a suit to recover arrears of rent (the amount in claim being less than Rs. 50) the defendant objected that the Plaintiff was his *benamidar*. The Munsif, who had final jurisdiction under s. 153 of the Bengal Tenancy Act— declined to go into the question of title but dismissed the suit on the ground that the plaintiff had failed to prove realisation of rent from the defendant in previous years. The plaintiff appealed to the District Judge and also preferred an application for revision under the proviso to s. 153. The District Judge overruled the defendant's objection in the appeal that no appeal lay under s. 153, and found for the plaintiff on the merits: *Held*, that no appeal lay to the District Judge from the decision of the Munsif as no question of conflicting title was decided by it; and the decision of the District Judge to the contrary was erroneous in law. That a second appeal lay against this decision. *Kalipada* v. *Shekhar Basini, 23 C. L. J. 235*, overruled. *Held, per* Sanderson C. J. That an appeal lay from the decision of the District Judge, which decided a question of conflicting title under s. 153, Bengal Tenancy Act. *Bhagabati Bewa* v. *Nanda Kumar Chuckerbutty, 12 C. W. N. 835*, explained. *Per* MOOKERJEE J. Where jurisdiction is usurped by a Court in passing an order against which an appeal would lie if it had been passed with jurisdiction, an appeal against the order cannot be defeated on the ground that the order was made without jurisdiction. *Bhagabati Bewa* v. *Nanda Kumar Chuckerbutty, 12 C. W. N. 835, Abdul Hossein* v. *Kashi Shahu, I. L. R. 27 Calc. 362, Meenakshi Naidoo* v. *Subramaniya Sastri, L. R. 14 I. A. 160*, and *Ranjit Misser* v. *Ramudar Singh, 16 C. L. J. 77*, discussed. The Court directed the District Judge to deal with the application for revision under the proviso to s. 153 of the Bengal Tenancy Act. GANGADHAR KARMAKAR *v.* SHEKHAR BASINI DASYA (1916) **20 C. W. N. 967**

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— s. 153—*concld.*

2. ——— *Rent suit valued below Rs. 100—Whether second appeal lies—Setting up title by the defendant in himself, whether involves a question of title in land between parties having conflicting claims thereto—Concurrent findings of fact of Courts below, dismissal of appeal for.* Where the plaintiff brings a suit for rent the value of which is less than Rs. 100 against the defendants claiming that she is a raiyat of the land and that the defendants are her under-raiyats and liable to pay rent to her and the defendants deny that they are under-raiyats under the plaintiff but plead that their father had purchased the land from the heir of the admitted previous raiyat of the land and that they had been holding the land as the raiyat of the landlord, and both the Courts below found that the plaintiff was in possession for a large number of years and that the defendants failed to prove that they ever held the land as raiyat of the landlord; *Held*, that a second appeal was not barred under s. 153 of the Bengal Tenancy Act, as the Courts below decided a question of title to land between parties having conflicting claims thereto. The appeal was dismissed, there being concurrent findings of fact of the Courts below. BABUA *v.* SARLI, (1916). **20 C. W. N. 1352**

3. ——— *Second Appeal, whether his Tenant claiming mafi, as jeth raiyat—Meanings of jeth raiyat and mafi.* Where in a rent suit valued at less than Rs. 100, the tenant claimed Rs. 3-5as. as *mafi* on the whole rent on the ground that he was a *jeth raiyat* and the District Judge allowed the *mafi* and the landlord preferred a second appeal: *Held*, that no second appeal lies under s. 153 of the Bengal Tenancy Act, as it does not involve a question of the amount of rent annually payable by the tenant. *Jeth raiyats* have to perform certain duties under the landlord, as for example, calling tenants for the collection of rent and such similar duties and for that they are allowed by the landlord, by way of wages and instead of payment in cash, a *mafi* from the total rent instead of payment in cash. *Mafi* is not rent because it is a sum of money payable by the landlord to the tenant, whereas rent is money payable by the tenant to the landlord and *mafi* is a set-off against the rent. SAFAIT HOSAIN *v.* WAIZUDDIN (1916) **20 C. W. N. 1207**

——— ss. 159, 163 to 167—

See SALE . **I. L. R. 43 Calc. 263**

——— ss. 161, 167—

See INCUMBRANCE **I. L. R. 43 Calc. 558**

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **s. 170** (*3*)—*Occupancy-holding, purchaser of, if may deposit, when holding put up to sale in execution of rent-decree against his vendor—"Interest voidable on the sale."* An unregistered purchaser of a non-transferable occupancy-holding is entitled to make a deposit under s. 170 (*3*) of the Bengal Tenancy Act when the holding has been advertised for sale in execution of a rent-decree obtained subsequently to his purchase by the landlord against the registered tenant— and this even though he has been in possession of the holding for less than twelve years. *Tarak Das Pal* v. *Harish Chandra Banerjee, 17 C. W. N. 163 : s. c. 16 C. L. J. 548,* and *Dayamayi* v. *Ananda Mohan Roy, 18 C. W. N. 971,* referred to. He has an interest in the holding which is voidable on the sale. AHAMADULLA CHOWDRY *v.* PRAYAG SAHU (1914)
20 C. W. N. 39

——— **s. 174**—

See DEPOSIT IN COURT.
I. L. R. 43 Calc. 100

——— **s. 182**—

See OCCUPANCY RIGHT.
I. L. R. 43 Calc. 195

——— *Homestead land, if means land capable of being used but not actually used as homestead—Homestead land if must be held by raiyat of same village and under same landlord—Agricultural purpose, storage of corn if.* There is nothing in the language of s. 182 of the Bengal Tenancy Act to justify its restriction to cases where the homestead and the holding are situated in one village and are held under one landlord. The section is not applicable where it is established that the land is not used by the raiyat as his homestead, and it is not sufficient for the raiyat to show that the character of the land is such as would justify its use as a homestead. The provisions of the Bengal Tenancy Act are applicable to all lands used for agricultural purposes and are not restricted to such lands alone as are actually under cultivation. Land taken with a view to gather and store thereon crops raised in adjacent lands actually cultivated by the raiyat is land used for agricultural purposes. DINA NATH NAG *v.* SASI MOHON DEY TARAFDAR (1915) . . . . **20 C. W. N. 550**

——— **Sch. III, Art. 1** (*a*)—

1. ——— *Khas Khamar land held by tenant under lease for term—Suit for khas possession brought more than six months after expiration of lease—Limitation—Heading of Chapter if may be looked at for construing sections.* The plaintiffs sued for *khas* possession of land held by the defendants under a lease for five years on the ground that they were entitled to re-entry at the expiration of the agreement. It was found that the defendants were not in possession of the land before they entered it under their lease and that the land in suit was *khas khamar.* The suit was brought more than six months after the expiration of the lease : *Held,* that the defendants were not included in the term " non-occupancy raiyat " within cl. 1 (*a*), Sch. 3 of the Bengal Tenancy Act and the suit was not barred. That the Court could look at the heading of Chap. XI of the Bengal Tenancy Act for the purpose of construing the sections. DWARKA NATH CHOWDHURI *v.* TAFAZAR RAHMAN SARKAR (1916) . **20 C. W. N. 1097**

2. ——— *Zerait land—Suit for ejectment—Limitation.* A suit to eject a raiyat of *zerait* land brought more than six months after the expiry of the term of his lease is barred by Art. (1), (*a*), of Sch. III of the Bengal Tenancy Act, s. 45 of the Act which was not applicable to *zerait* lands under s. 116 having been replaced by the said article which is applicable. GANPAT MAHTON *v.* RISHAL SINGH (1914)
20 C. W. N. 14

——— **Sch. III, Art. 2**—*Limitation—Agricultural purpose if necessary for lease to come under the Tenancy Act—Transfer of Property Act (IV of 1882), s. 117.* The plaintiff sued to recover arrears of rent due under two *kabuliats* given in respect of agricultural lands leased to the defendant. The leases were *mustagiri* leases and contained the provision that " the *mustagir* shall enjoy the *parti* land which may be converted into culturable land in the *jamabandi* of the mauza which may be increased till the term of the settlement:" *Held,* per FLETCHER, J. That one of the purposes for which the leases were granted was to authorise the defendant to bring under cultivation the waste land which is obviously an agricultural purpose and the period of limitation applicable to the suit was that provided under Art. 2 of Sch. III, Bengal Tenancy Act. That even if the leases were held not to be for agricultural purposes they were governed by the Bengal Tenancy Act for the purposes of limitation. *Burnamoyi Dassi* v. *Burna Moyi Choudhrani, I. L. R. 23 Calc. 191. Per* RICHARDSON J. Whether the leases which were temporary leases relating to agricultural lands granted to a rent farmer, were or were not leases for agricultural purposes, the Bengal Tenancy Act applied and the period of limitation applicable was that provided by that Act. That in view of the cases, *Durga Prosad* v. *Brindaban, I. L. R. 19 Calc. 504, Peary Mohun* v. *Sreeram Chandra, 6 C. W. N. 794,* and *Burnamoyi Dassi* v. *Burna Moyi Choudhrani, I. L. R. 23 Calc. 191,* and of the terms of s. 117 of the Transfer of Property Act, it does not follow that because a lease (of agricultural land) is not a lease for agricultural purposes it is subject only to the Transfer of Property Act and is not governed in any respect by the Bengal Tenancy Act. *Per* FLETCHER J. Although a *mustagiri* lease is sometimes and perhaps usually a lease to a middleman yet in Bihar the term is applied frequently to temporary leases instead of the word *thika.* RASH BEHARI LAL MUNDER *v.* TILUKDHARI LALL (1915) . **20 C. W. N. 485**

——— **Sch. III, Art. 3**—*Legitimate purpose and scope of—Governs relations of landlord and tenant only—Special limitation—Dispossession*

BENGAL TENANCY ACT (VIII OF 1885)—*concld.*

———— **Sch. III, Art. 3**—*concld.*

sufficient to deprive tenant of right of suit. In determining what Art. 3 of Sch. III of the Bengal Tenancy Act means the purpose and scope of the Act, which governs the relations of landlord and tenant only, must not be left out of sight. It was not the design of the Act to deprive a tenant of the rights that he otherwise possess against a third person between whom and himself there was no relationship of landlord and tenant. It was only intended to deal with such rights as existed between landlord and tenant. To deprive a tenant of his right of suit there must be a plain dispossession within the meaning of Art. 3 of the Schedule. KRISHNA CHANDRA BAGDI *v.* SATISH CHANDRA BANERJI (1915) . **20 C. W. N. 872**

BEQUEST.

———— **conditional—**

See HINDU LAW—WILL.
I. L. R. 38 All. 446

———— **to a person not named in the will—**

See WILL . .**I. L. R. 40 Bom. 1**

———— **to different legatees—**

See HINDU LAW—WILL.
I. L. R. 38 All. 446

BHAGDARI AND NARVADARI ACT (BOM. V OF 1862).

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 11. . **I. L. R. 40 Bom. 614**

———— **s. 3—**

See LAND ACQUISITION ACT (I OF 1894), S. 32 . . **I. L. R. 40 Bom. 254**

———— **s. 3**—*Will—whether devise by will amounts to an alienation—Alienation not expressly limited to transactions inter vivos—" Alienation," meaning of.* The devise by will of an unrecognised sub-divison of a *bhag* is an alienation contravening the provisions of the Bhagdari Act. JHAVER JIJIBHAI *v.* HARIBHAI HANSJI (1915)
I. L. R. 40 Bom. 207

BILL OF LADING.

See CONTRACT ACT (IX OF 1872), S. 56
I. L. R. 40 Bom. 301

See CONTRACT ACT (IX OF 1872), SS. 56, 65
I. L. R. 40 Bom. 529

See SALE OF GOODS .
I. L. R. 40 Bom. 11

BOMBAY ACTS.

———— **1862—V.**

See BHAGDARI ACT.

———— **1874—III.**

See BOMBAY HEREDITARY OFFICES ACT.

———— **1879—V.**

See LAND REVENUE CODE, BOMBAY.

BOMBAY ACTS—*concld.*

———— **1879—XVII.**

See DEKKHAN AGRICULTURISTS' RELIEF ACT.

———— **1880—I.**

See KHOTI SETTLEMENT ACT.

———— **1887—IV.**

See BOMBAY PREVENTION OF GAMBLING ACT.

———— **1901—III.**

See BOMBAY DISTRICT MUNICIPALITIES ACT.

———— **1903—IV.**

See RECORD OF RIGHTS ACT, BOMBAY.

———— **1905—I.**

See COURT OF WARDS ACT, BOMBAY.

BOMBAY COTTON TRADE ASSOCIATION RULES.

See CONTRACT ACT (IX OF 1872), S. 47
I. L. R. 40 Bom. 517

BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. III OF 1901).

———— **s. 42**—*Liability of Councillors for misapplied funds—Misapplication by Secretary and accounts clerk of the Municipality—' Misapplication,' interpretation of—Suit by the Secretary of State for India in Council.* The Secretary of State for India in Council sued to recover a sum of money from the defendants, the first two of whom were the Secretary and accounts clerks of a Municipality, the rest being the Councillors thereof. The sum claimed was the Municipal money embezzled by defandants Nos. 1 and 2. The liability of the remaining defendants (defendants Nos. 3 to 12) was based upon s. 42 of the Bombay District Municipalities Act (Bombay Act III of 1901). Defendants Nos. 3 to 12 contended that s. 42 was not applicable inasmuch as the embezzlements by the paid servants of the Municipality would not amount to misapplication of the Municipal funds within the meaning of the section. The lower Court overruled the contention and decreed the suit. The defendants Nos. 3 to 12 having appealed to the High Court. *Held,* confirming the decree, that the operation of s. 42 of the Bombay District Municipalities Act (Bombay Act III of 1901) was not restricted to misapplications made by any Councillor or Councillors ; but it applies to any misapplication by whomsoever made. *Per* BATCHELOR J. :—" The context in which the word ' misapplication ' occurs indicates that the word is employed rather in the broad and popular sense than in the narrow or etymological sense. There is no requirement that the misapplication must be by the Councillors themselves or by any specified persons whatsoever, and the use of the passive word ' happened ' seems to suggest also that the scope of the section extends to a misappropriation of the Municipal funds by a Municipal employee,

BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. III OF 1901)—*concld.*

——— s. 42—*concld.*

provided only that the misappropriation was facilitated by the Councillors' gross neglect of their duties." *Per* HAYWARD, J. " Any diversion of funds however caused from their proper purposes would be covered by the wide term ' misapplication ' and it is in that wide sense that the term has been introduced into s. 42 of the Act. It has purposely not been restricted to a ' misapplication ' to which a Councillor shall have been a party, but has been applied expressly to a ' misapplication ' which shall have happened through or been facilitated by gross neglect of duty by a Councillor, that is to say, which has happened by any other agency through the gross neglect of a Councillor." MANILAL GANGADAS *v.* SECRETARY OF STATE FOR INDIA (1915) . . **I. L. R. 40 Bom. 166**

——— s. 160—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 115 **I. L. R. 40 Bom. 509**

BOMBAY HEREDITARY OFFICES ACT (BOM. III OF 1874).

——— ss. 25, 36—

See BOMBAY HEREDITARY OFFICES ACT (BOM. III OF 1874), ss. 25, 36. **I. L. R. 40 Bom. 55**

——— *Suit for a declaration—*

Declaration that plaintiff is the nearest heir of a deceased representative Vatandar—Watan—Civil Court—Jurisdiction. A suit for a declaration that the plaintiff is the nearest heir of a deceased representative Vatandar is within the jurisdiction of a Civil Court although a declaration that the plaintiff is entitled to have his name entered in Vatan Register is a matter beyond the jurisdiction of the Court. *Rahimkhan* v. *Dadamiya, I. L. R. 34 Bom. 101*, followed. SHANKAR BABAJI *v.* DATTATRAYA BHIWAJI (1915) . . **I. L. R. 40 Bom. 55**

BOMBAY PREVENTION OF GAMBLING ACT (BOM. IV OF 1887).

——— s. 3—*Instruments of gaming—Book used for recording bets already made is an instrument of gaming.* A book which is used for recording entries of the bets made by persons frequenting a place, is an instrument of gaming, within the definition of that term in s. 3 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887). *Emperor* v. *Lakhamsi, I. L. R. 29 Bom. 264*, followed. EMPEROR *v.* MANILAL MANGALJI (1915) **I. L. R. 40 Bom. 263**

BOMBAY REGULATION (II OF 1827).

——— s. 5—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 115 **I. L. R. 40 Bom. 86**

BOMBAY REGULATION (IV OF 1827).

——— cl. 26—

See PRE-EMPTION **I. L. R. 40 Bom. 358**

BONA FIDE CLAIM.

See CRIMINAL TRESPASS. **I. L. R. 43 Calc. 1143**

BONA FIDES.

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), s. 57 **I. L. R. 39 Mad. 250**

——— want of—

See DEPOSIT IN COURT. **I. L. R. 43 Calc. 269**

BOND.

See JOINT BOND **I. L. R. 39 Mad. 409**

BOUNDARIES ACT (XXVIII OF 1860).

——— ss. 24, 25—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11 . **I. L. R. 39 Mad. 1202**

BOUNDARY SETTLEMENT OFFICER.

——— decision of a—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11 . **I. L. R. 39 Mad. 1202**

BREACH OF CONTRACT.

See DAMAGES . **I. L. R. 43 Calc. 493**

BREACH OF TRUST.

See TRUSTEE. **I. L. R. 39 Mad. 115**

BRITISH COURT.

See FOREIGN DECREE **I. L. R. 40 Bom. 551**

BROKERAGE CONTRACT.

——— *terminable by parties by three months' notice before the end of the term—Under-broker who had notice of brokerage contract, if may claim damages for whole term when brokerage contract legally terminated before expiry of term—Under-broker wrongfully dismissed before brokerage contract terminated— Damages, measure of —Brokerage contract, if terminable by fresh agreement—Under-broker, if may insist on termination by notice—Hindu joint family, carrying on business in partnership—Contract by family, if terminates with death of co-parcener—Contract Act (IX of 1872), s. 253, cl. 10—Rule of Hindu law, if to be considered.* By an agreement between A and B, dated 31st May 1911, the former appointed the latter to act as broker for him for 5 years or for such further period as might be mutually agreed upon between the parties. It was provided in the agreement that it might be determined by either party by giving three months' notice to the other party. In pursuance of another term of the said agreement B (the broker) appointed C to act as under-broker for him during the subsistence of the said agreement and C (the under broker) had notice of the said agreement. On 12th August 1912, the broker B, wrongfully dismissed the under-broker C, and subsequently on 2nd December 1912 in good faith entered into a second agreement with A inconsistent with the

BROKERAGE CONTRACT—*concld*

first. *Held*, in a suit by C against B for wrongful termination of the under-brokerage contract, that as the under-brokerage contract depended upon the subsistence of the brokerage contract and the latter contract was validly terminated on the 2nd December 1912, the under-brokerage contract also came to an end on the same day, and the plaintiff was entitled to recover damages as for the period from his dismissal on the 12th August to the termination of the contract on 2nd December 1912. *Per* MOOKERJEE J. That the three months' notice required by the contract between A and B was for the benefit and protection of the contracting parties themselves and C was not entitled to make a grievance that either party has allowed the other to determine that agreement without insisting on the prescribed notice. Where X and Y members of a joint family (of which Y was the *karta*) carrying on a joint family business entered into a contract of under-brokerage and X subsequently died; but Y and the other party to the contract went on dealing with each other as if the contract subsisted: *Held, per* CURIAM, that X's death did not terminate the contract. *Per* MOOKERJEE, J. Where there are two joint agents and one of them dies, upon his death the contract of agency terminates only so far he is concerned, but not as regards the surviving agent. The rights and liabilities of coparceners in a joint Hindu family cannot be determined by exclusive reference to the Indian Contract Act, but must be considered also with regard to the general rules of Hindu Law; according to these rules, the death of one of the coparceners does not dissolve a family partnership. RAGHUMULL *v.* LUCHMONDAS (1916)
20 C. W. N. 708

BUNDELKHAND ALIENATION OF LAND ACT (II OF 1903)

——— **s. 17**—*Mortgage executed by Collector—Stamp—Stamp Act (II of 1899) s. 3. Held,* that a mortgage executed by a Collector under the provisions of s. 17 of the Bundelkhand Alienation of Land Act, 1903, is not exempt from stamp duty. SOMWARPURI *v.* MATA BADAL (1916)
I. L. R. 38 All. 351

BURDEN OF PROOF.

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 140, 141 **I. L. R. 40 Bom. 239**

See MORTGAGE **I. L. R. 38 All. 540**

See OUDH ESTATES ACT (I OF 1869) SS. 8, 10 . **I. L. R. 38 All. 552**

C

C. I. F. CONTRACT.

See SALE OF GOODS
I. L. R. 40 Bom. 11

CALCUTTA BALED JUTE ASSOCIATION.

See CONTRACT **I. L. R. 43 Calc. 77**

CALCUTTA HIGH COURT.

——— **decision of—**

See PATNA HIGH COURT **20 C. W. N. 983**

CALCUTTA IMPROVEMENT ACT (BENG. V OF 1911).

——— **s. 71, cl. (c)—**

See RECORDS, POWER TO CALL FOR.
I. L. R. 43 Calc. 239

CALCUTTA MUNICIPAL ACT (BENG. III OF 1899).

——— **ss. 341, 617—**

See MUNICIPAL LAW
L. R. 43 I. A. 243

CARRIER.

——— **suit against a—**

See SPECIFIC MOVEABLE PROPERTY.
I. L. R. 39 Mad. 1

CARRIERS.

See CARRIERS ACT (III OF 1865).
See CARRIERS BY SEA.

CARRIERS ACT (III OF 1865).

See CONTRACT ACT (IX OF 1872), SS. 56, 65
I. L. R. 40 Bom. 529

CARRIERS BY SEA.

See CONTRACT ACT (IX OF 1872), SS. 56, 65 . **I. L. R. 40 Bom. 529**

CASTE.

See CHURCH, . **I. L. R. 39 Mad. 1056**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. I, R. 8.
I. L. R. 40 Bom. 158

CAUSE OF ACTION.

See CIVIL PROCEDURE CODE (1908), O. II, R. 2 . . **I. L. R. 38 All. 217**

See DECREE FOR POSSESSION.
I. L. R. 38 All. 509

See HUNDI, SUIT ON
I. L. R. 40 Bom. 473

See MADRAS LAND ENCROACHMENT ACT (III OF 1905), SS. 5. 6, 7, 14.
I. L. R. 39 Mad. 727

——— **splitting up of—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. II, R. 2.
I. L. R. 40 Bom. 351

——— **suspension of—**

See LIMITATION **I. L. R. 43 Calc. 660**

CENTRAL BUREAU REGISTER.

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R. 43 Calc. 1128

CERTIFICATE OF PURCHASE.

See FORGERY . **I. L. R. 43 Calc. 421**

CERTIFICATE OF SUCCESSION.

See CIVIL PROCEDURE CODE (1908), S. 109 . **I. L. R. 38 All. 188**

CERTIFICATION OF PAYMENT.

See EXECUTION OF DECREE.
I. L. R. 43 Calc. 207

CERTIFIED COPY.

——— filling of—

See FORGERY . **I. L. R. 43 Calc. 783**

CERTIORARI.

——— writs of—

See PRESS ACT (I OF 1910), S. 3 (*1*), PROVISO . . **I. L. R. 39 Mad. 1164**

CESS.

See U. P. LAND REVENUE ACT (III OF 1901), SS. 56, 86 **I. L. R. 38 All. 286**

CHANGE OF VILLAGE.

See RELIGIOUS ENDOWMENTS ACT (XX 1863) . **I. L. R. 39 Mad. 949**

CHARGE.

See CRIMINAL PROCEDURE CODE, SS. 222 (*2*), 233. . **I. L. R. 38 All. 42**

See HINDU LAW—WILL
I. L. R. 39 Mad. 365

See TRANSFER OF PROPERTY (IV OF 1882), S. 59 . . **I. L. R. 38 All. 461**

CHARGE TO JURY.

See PRACTICE . **I. L. R. 40 Bom. 220**

CHARITABLE OR RELIGIOUS TRUST.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92 **I. L. R. 40 Bom. 439**

CHARITABLE TRUST.

——— *Acts of majority binding on minority—Indian Trusts Act (II of 1882), s. 42 "Any trustees or trustee." meaning of —Payment to some only of the trustees, not a valid payment.* An act of the majority of a body of charitable trustees binds the whole body. A mortgage purporting to be on behalf of all but executed only by a majority of the trustees when the others have declined to join in its execution, is binding on all the trustees. *Teramath* v. *Lakshmi, I. L. R. 6 Mad. 270,* followed. A payment to some only of several trustees is not a valid payment unless he has or is held out by his co-trustees as having authority to receive the same. The words "any trustees or trustee" in s. 42 of the Indian Trusts Act mean the trustee where there is only one, the trustees where there are more. *Rambalu* v. *Committee of Rameshwar, 1 Bom. L. R. 667,* not followed. *Semble* : If a document is drawn up in the names of several persons and it is the intention of the parties that all should execute it, it will be incomplete and inoperative till all have done so. *Sivaswami Chetty* v. *Sevagan Chetty, I. L. R. 25 Mad. 389* and *Latch* v. *Wedlake, II A. & E., 959,* followed. It is a question of fact in each case as to what was the intention of the parties. NETHIRI MENON *v.* GOPALAN NAIR (1915)
I. L. R. 39 Mad. 597

CHARTER ACT (24 & 25 VICT., C. 104).

——— cls. 13, 14—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 421, 233 AND 537.
I. L. R. 39 Mad. 527

CHARTER-PARTY.

See CONTRACT ACT (IX OF 1872), S. 56.
I. L. R. 40 Bom. 301

See CONTRACT ACT (IX OF 1872), SS. 56, 65 . **I. L. R. 40 Bom. 529**

CHAUKIDARI CHAKARAN LAND.

——— onus of proving—

See REMAND. **I. L. R. 43 Calc. 1104**

CHAUKIDARI CHAKARAN LANDS ACT (BENG. VI OF 1870).

——— s. 1

See SIMANADARS **I. L. R. 43 Calc. 227**

CHETTY MONEY-LENDING FIRM.

See PRINCIPAL AND AGENT.
I. L. R. 43 Calc. 527

CHOTA NAGPUR TENANCY ACT (BENG. VI OF 1908).

——— ss. 27, 264, 528.

See JURISDICTION **I. L. R. 43 Calc. 136**

——— ss. 81, 83, 87, 256—*Dispute under s. 83, jurisdiction of Settlement Officer upon such dispute to record entry that tenure mundari khuntkati—Suit for rent instituted under Act X of 1859—Decree and purchase by landlord in execution after Chota Nagpur Tenancy Act brought into force and land recorded as above at Settlement—Title to tenure.* Under s. 83 of the Chota Nagpur Tenancy Act, the Settlement Officer has jurisdiction to decide a dispute between landlord and tenant as to whether the latter was a *mundari khuntkatidar* and to record an entry to the effect in the record-of-rights. Where pending a suit for rent brought under Act X of 1859, the Chota Nagpur Tenancy Act (Beng. VI of 1908) came into operation, and the landlord in execution of the decree obtained in the suit put up the holding to sale and purchased it, but meanwhile in the course of settlement proceedings the land was recorded as the *mundari khuntkati* of the defendant. *Held,* that although the new Act did not apply to the suit, it governed proceedings in execution instituted after the suit had terminated in a decree ; and the entry that the land was the *mundari khuntkati* of the tenants being conclusive evidence under s. 256 of the Act, the landlord acquired no title in the land. JOGENDRA NATH DEY *v.* GOUR SINGH MURA (1915)
20 C. W. N. 582

——— s. 184, 191 (*2*), 208 (*2*), 210—*Rent decree—Execution by arrest of judgment-debtor in the first instance, if legal—Effect.* A landlord who was obtained a decree for rent of a tenure under the Chota Nagpur Tenancy Act may proceed at once to execute it against the person of the tenant and

CHOTA NAGPUR TENANCY ACT (BENG. VI OF 1908)—*concld.*

——— s. 184—*concld.*

he is not bound to put up the tenure to sale in the first instance. The warrant of arrest so taken out will only stay proceedings for sale of the tenure. S. 191 (2) of the Chota Nagpur Tenancy Act which refers to a person arrested in execution of a decree for money has no application to such a case. MADAN MOHAN NATH SAHI DEO *v.* PRATAP UDAI NATH SAHI DEO (1915) . **20 C. W. N. 111**

——— s. 231—*Mortgage decree—Execution sale —Purchase by decree-holder—Application by judgment-debtor to set aside sale—Limitation Act (IX of 1908), Sch. I, Art. 166, or s. 231, Chota Nagpur Tenancy Act (Beng. VI of 1908), applicable.* In execution of a mortgage-decree, the mortgaged property was sold on 21st December, 1912, and was purchased by the decree-holder and the sale was confirmed on the 15th February, 1913. On 28th August, 1914, the judgment-debtor applied to set aside the sale on the ground that under s. 47 of Chota Nagpur Tenancy Act, the sale was null and void : *Held*, that the application was barred by limitation, if not under Art. 166 of the Limitation Act at any rate under s. 231 of the Chota Nagpur Tenancy Act. NILMONI GOSWAMI *v.* ROBAN MAJHI (1916). . . **20 C. W. N. 1243**

CHOWKIDARI CHAKRAN LAND.

See CHAUKIDARI CHAKRAN LAND.

CHURCH.

——— *Roman Catholic Church —Convert to Roman Catholic religion—Claim for certain exclusive rights in the church by one set of converts over another, on the ground of superiority of caste, unsustainability of —Internal management of church, absolute right of church authorities over.*" According to Canon Law a Roman Catholic church becomes, as soon as it is consecrated, the property of the church authorities, irrespective of the fact that any particular worshipper or worshippers contributed to its construction. The Bishop and other church authorities have the exclusive right to the internal management of the church, whether relating to secular or religious matters, such as accommodating the congregation inside the church and prescribing the part to be taken by the congregation in the services and the ceremonies. The Canon Law knows no distinction of castes amongst the Roman Catholics and no convert to Roman Catholicism can claim any special or exclusive rights or privileges in the church on account of any supposed superiority of his caste over that of others. Where a certain section of Roman Catholic converts of a place claimed as against the local church authorities and as against another set of converts whom they considered to be of inferior caste, an exclusive right to sit in and worship from a particular portion of the church during time of the service and to take part in certain duties connected with the church service : *Held*, that such a claim was legally unsustainable, however long such privileges might have been

CHURCH—*concld.*

enjoyed, whether by reason of any such custom or by reason of any agreement to that effect with any former Bishop of the locality. *Long v. The Bishop of Cape Town, 1 Moo. P. C. C. (N. S.), 411,* and *Merriman v. Williams, L. R. 7 A. C. 484,* distinguished. MICHAEL PILLAI *v.* RT. REV. BARTLE (1915) . . **I. L. R. 39 Mad. 1056**

CHURCH AUTHORITIES.

See CHURCH . **I. L. R. 39 Mad. 1056**

CIVIL AND REVENUE COURTS.

——— jurisdiction of—

See AGRA TENANCY ACT (II OF 1901), S. 164. . **I. L. R. 38 All. 322**

——— jurisdiction of—

See U. P. LAND REVENUE ACT (III OF 1901), S. 233, CL. (*k*). **I. L. R. 38 All. 243**

CIVIL COURT.

See RIGHT OF SUIT. **I. L. R. 40 Bom. 200**

——— general rules of practice for—

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 66. **I. L. R. 38 All. 481**

——— jurisdiction of—

See ADEN SETTLEMENT REGULATION (VII OF 1900), S. 13 **I. L. R. 40 Bom. 446**

See BOMBAY HEREDITARY OFFICES ACT (BOM. III OF 1874), SS. 25, 36. **I. L. R. 40 Bom. 55**

See MADRAS ESTATES LAND ACT (I OF 1908), S. 6, SUB-S. (6), S. 8. **I. L. R. 39 Mad. 944**

——— *Jurisdiction, ouster of —Onus—Inam, grant of—Kudivaram—Right, ownership of.* A party seeking to oust the jurisdiction of ordinary Civil Courts must establish his right to do so. *Indety China Nagadu v. Potu Konchi Venkatasubbayya, (1910) Mad. W. N. 639,* and *Virabhadrayya v. Sonti Venkanna, 24 Mad. L. J. 659,* followed. There is no presumption that an inamdar to whom an inam was granted was not owner of the kudivaram right at the date of the grants. *Venkata Sastrulu v. Divi Sitaramudu, 26 Mad. L. J. 585 and Ponnusamy Padayachi v. Karuppudayan, 26 Mad. L. J. 285,* referred to. SRIMATH JAGANNATHA CHARYULU *v.* KUTAMBARAYUDU, (1914) . . . **I. L. R. 39 Mad. 21**

CIVIL COURTS ACT (XII OF 1887).

——— ss. 7, cl. (1), 18—

See JURISDICTION **I. L. R. 43 Calc. 650**

CIVIL PROCEDURE CODE (ACT X OF 1877).

——— s. 583—

See REDEMPTION **I. L. R. 38 All. 163**

CIVIL PROCEDURE CODE (ACT XIV OF 1882).

——— **ss. 50, 211, 212—**

See JURISDICTION
I. L. R. 43 Calc. 650

——— **ss. 223, 224, 235, 248, 249—**

See REVIVOR . **I. L. R. 43 Calc. 903**

——— **s. 229 B—**

See FOREIGN DECREE .
I. L. R. 40 Bom. 551

——— **s. 232—**

See SPECIFIC PERFORMANCE.
I. L. R. 43 Calc. 990

——— **s. 244—**

See CIVIL PROCEDURE CODE (ACT V OF 1908). . **I. L. R. 39 Mad. 541**

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 88, 89.
I. L. R. 40 Bom. 321

——— **ss. 244, 258—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 2.
I. L. R. 40 Bom. 333

——— **s. 258**—*Civil Procedure Code (Act V of 1908), O. XXI, r. 2—Mortgagee (decree-holder) left in possession under decree—Liability under decree to account and to credit surplus income annually—Receipt by mortgagee, not certified to Court, effect of—Receipt, if payment under or adjustment of decree—Certificate within ninety days, if necessary.* Where under the terms of a decree, the decree-holders (mortgagees) were to be in possession of the mortgaged property for six years, to render accounts every year and to give credit for any surplus income accruing from the lands, and at the end of eight years the judgment-debtor applied for the taking of accounts and delivery of possession of the lands: *Held*, that the receipts by the decree-holders of the income from the lands were not payments under, or adjustments of, the decree, under s. 258 of the Civil Procedure Code (Act XIV of 1882) corresponding to Order XXI, rule 2 of the new Code, and did not require to be certified to the Court within ninety days from the dates when the incomes were received by the decree-holders. *Vaidhinadasamy Ayyar* v. *Somasundram Pillai, I. L. R. 28 Mad. 473, 478*, followed. *Ramasami Naik* v. *Ramasami Chetti, I. L. R. 30 Mad. 255, 265* and *Nistarini Dasi* v. *Kazim Alini, 12 C. L. J., 65*, distinguished YELLA REDDI *v.* SYED MUHAMMADALLI (1915)
I. L. R. 39 Mad. 1026

——— **ss. 366, 371**—*Abatement of suit—Mortgage—Joint Hindu family—Redemption suit by the mortgagor in his personal right—Second suit to redeem by coparceners not barred by abatement.* One V, a member of an undivided Hindu family, instituted in the year 1881 a suit for redemption against the mortgagee, but pending the suit he died on the 9th July 1883. On the 15th October 1883, the Court directed that the suit should abate. Subsequently in the year 1912, T V's son, and three grandsons filed a second suit for redemption of the same property alleging that the property being ancestral they had interest in it by birth. It was also alleged that an adult brother of V was interested as a coparcener in the same property. The trial Court dismissed the suit on the strength of the order of abatement passed on the 15th October 1883. On appeal, the District Court reversed the decree and remanded the suit for disposal. On appeal to the High Court: *Held*, that there being no indication that V's suit was brought in a representative capacity it would certainly be defective as a redemption suit according to all canons of prodecure, and if the suit was defective V's personal right to sue did not embrace the rights of his coparceners and none of them would be concluded by the application of s. 371 of Civil Procedure Code (Act XIV of 1882). *Held*, also, that apart from the question raised upon s. 371, there was sufficient authority for the conclusion that since the introduction of the Code of 1877 no legal proceeding by V short of actual redemption would deprive his coparceners of their right to redeem against the mortgagee *Per* CURIAM: The right of a mortgagee to enforce his security by sale in a suit against the person who executes with authority, express or implied, a mortgage of family property, without joining the coparceners interested, results from the authorized mortgage which carries with it the all embracing remedy. It does not follow that the defect of one co-owner who desires to redeem will bar the exercise of the same right by another: hence arises the necessity for joining all parties interested in one suit. RAMCHANDRA NARAYAN *v.* SHRIPATRAO (1915) . **I. L. R. 40 Bom. 248**

CIVIL PROCEDURE CODE (ACT XIV OF 1882) —*contd.*

——— **ss. 366, 371**—*concld.*

——— **s. 375—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 89, O. XXIII, r. 3.
I. L. R. 40 Bom. 386

——— **s. 392—**

See RIGHT OF SUIT.
I. L. R. 39 Mad. 501

——— **s. 462—**

See TRUSTEE. **I. L. R. 39 Mad. 115**

——— *Compromise of suit on behalf of minor made without obtaining leave of the Court—Liability of other party to a joint bond so executed as part of the compromise.* A compromise made on behalf of a minor without having complied with the requirements of s. 462 of the Civil Procedure Code, 1882, as to obtaining leave of the Court, is not enforceable against the minor. The fact that a joint bond executed as a part of the compromise was not enforceable against the minor did not absolve the other obligee from liability. JAMNA BAI *v.* VASANTA RAO (1916)
I. L. R. 39 Mad. 409

——— **s. 539—**

See MAHOMEDAN LAW—ENDOWMENT.
I. L. R. 43 Calc. 1085

CIVIL PROCEDURE CODE (ACT XIV OF 1882) —*concld.*

——— **s. 584—**

See REMAND. **I. L. R. 43 Calc. 1104**

CIVIL PROCEDURE CODE (ACT V OF 1908).

See PRESIDENCY SMALL CAUSE COURTS (ACT XV OF 1882), S. 19, CL. (*s*).
I. L. R. 39 Mad. 219

——— **s. 2, cl. (*11*) ; O. XXII, r. 1**—*Legl. Representative—Survival of right to sue—Daughter's suit for possession of father's estate—Death of daughter—Right of father's heirs to continue suit.* Pending a suit by a daughter brought after the death of her mother to recover possession of her father's property as his heir from strangers whom she alleged to be trespassers, the plaintiff (daughter) died. In an application by the grandsons of the deceased plaintiff's father's brother as his heirs to continue the suit: *Held,* (i) that the right to sue survived within the meaning of Order XXII, rule 1, Civil Procedure Code (Act V of 1908) and (ii) that the applicants were her legal representatives within the meaning of s. 2, clause (*11*) of Civil Procedure Code. *Premmoyi Choudhrani* v. *Preonath Dhur, I. L. R. 23 Calc. 636,* and *Rikhai Rai* v. *Sheo Pujan Singh, I. L. R. 33 All. 5,* followed. RAMASWAMI *v.* PEDAMURNAYYA (1914)
I. L. R. 39 Mad. 382

——— **s. 10—**

See STAY OF SUIT.
I. L. R. 43 Calc. 144

——— **s. 11—**

See RES JUDICATA .
I. L. R. 40 Bom. 675

See SARANJAM **I. L. R. 40 Bom. 606**

1. ——— *Prior suit to claim possession by virtue of the purchase of mortgagee's rights—Subsequent suit for repayment of the money advanced on mortgage—No bar of res judicata—Bhagdari Act (Bom. Act V of 1862)—Mortgage of unrecognised share of a bhag—Mortgage void—Unlawful consideration—Indian Contract Act (IX of 1872), s. 24—Indian Limitation Act (IX of 1908), s. 62.* One K mortgaged with possession an unrecognised share of a *bhag* with R on May 19, 1896, contrary to the provisions of the Bhagdari Act, 1862. The mortgage deed provided that after possession by the mortgagee for eleven years the mortgage amount was to be paid to him whenever he should demand it either out of the property or by the mortgagor or his heirs personally. In 1908 B obtained a money decree against the estate of R whose mortgage right was put up to sale and purchased by the plaintiff at a Court-sale for Rs. 577. In 1910, the plaintiff filed a suit No. 176 of 1910 against the representatives of R amd K to obtain possession. No claim was made in that suit for payment of the amount of the mortgage-debt. The suit failed on the ground that the mortgage was invalid and therefore unenforceable. In 1911, another suit was filed by the plaintiff against the same parties

CIVIL PROCEDURE CODE (ACT V OF 1908)— *contd.*

——— **s. 11**—*contd.*

to recover Rs. 788 from the estate of K and in the alternative to recover Rs. 577 from the estate of B. The defendants Nos. 1 to 3 contended that the suit was barred by *res judicata* and also pleaded limitation. *Held,* that the subsequent suit for the mortgage-debt was not barred by *res judicata,* as the prior claim of 1910 for possession was not really a claim on the mortgage but a claim by virtue of the purchase by the plaintiff of the mortgagee's rights. *Held,* further, that the consideration for the mortgage being unlawful under s. 24 of the Contract Act, 1872, it failed *ab initio* and the claim for repayment of the money advanced to the mortgagor as money had and received being brought more than three years after the date of the mortgage deed was barred by reason of Article 62 of Limitation Act, 1908. *Javerbhai Jorabhai* v. *Gordhan Narsi I. L. R. 39 Bom. 358,* followed. BAI DIWALI *v.* UMEDBHAI BHULABHAI (1916)
I. L. R. 40 Bom. 614

2. ——— *Prior suit to set aside alienation made by minor's mother—Mortgage created by alienee before suit—Mortgagee not made party to the suit—Partial representation by mortgagor—Subsequent suit by mortgagee to support alienation—Privity between parties—Subsequent suit not barred by res judicata—Meaning of words "claiming under."* The property in suit originally belonged to one Devare. In 1883, during the minority of Devare, his mother sold it to the Bhojes from whom one Bavachi received it in exchange for another parcel of land. In 1891, by a simple mortgage Bavachi mortgaged the property to the plaintiff. In 1898, a suit was brought by Devare, against his mother, Bavachi, and the Bhojes in order to set aside the sale by his mother to the Bhojes. That suit was sucessful and the result was that the sale to Bhojes was set aside. In 1901, the plaintiff obtained a decree on his mortgage against Bavachi. The property was put to sale and was purchased by the plaintiff with permission. But when the plaintiff endeavoured to get possession he was resisted by Devare. The plaintiff, therefore, brought a suit in 1909 against Devare, Bavachi and the Bhojes to recover possession. The defentant Devare contended that the plaintiff's suit was barred by *res judicata* as he was bound by the decree obtained against his mortgagor Bavachi in the suit of 1898. *Held,* that as a mere mortgagee the plaintiff would not be bound by the earlier decision, because his title arose prior to the suit in which the decree against his mortgagor was obtained, and the mortgagor possessing only the equity of redemption had not in him any such estate as would enable him sufficiently to represent the mortgagee in the suit instituted after the mortgage. *Sita Ram* v. *Amir Begam, I. L. R. 8 All. 324, 338,* followed. RAMCHANDRA DHONDO *v.* MALKAPA (1916)
I. L. R. 40 Bom. 679

3. ——— *Res Judicata—Applicability of the principle as against co-de-*

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 11**—*contd.*

fendants. A deposit of money in a firm was owned in equal moieties by D and L. In a suit brought by D in the High Court of Bombay to recover his moiety of the deposit, his brother L who was a partner in the firm admitted his claim ; but it was contested by the other partners, defendants Nos. 1 and 2. Defendants Nos. 3 to 6 contended that they were not partners in the firm at all. The Court passed a decree against L and defendants Nos. 1 and 2. The firm made losses and ceased to work. L, thereupon, filed the present suit in the Court of the Subordinate Judge at Surat for a Dissolution of the firm and for taking its accounts. D was made a party to the suit as a creditor of the firm. The defendants Nos. 3 to 6 again contended that they were not partners in the firm. A question having arisen whether the contention was *res judicata* in the present suit : *Held*, that the relief given to D in the earlier suit did not require or involve a decision of any case between the co-defendants, and, therefore, the co-defendants were not to be bound as between each other by the Court's proceeding and decision which were necessary only to the decree which D obtained. *Per* BATCHELOR J. " The Court is slow to enforce the principle of *res judicata* as against co-defendants, and the limits of the operation of the principle in such cases seem to me to be narrowly laid down." FAKIRCHAND LALLUBHAI *v.* NAGINCHAND KALIDAS (1915)

I. L. R. 40 Bom. 210

4. ——— *Res judicata*—*Decision embodied in decree operates as res judicata.* In 1900, the defendants obtained a *mulgeni* (permanent) lease of certain lands from the then manager of the temple. In 1910, the plaintiff, the new manager, sued the defendants in ejectment praying that the *mulgeni* lease was not binding on him and that the defendants being annual tenants should be evicted. The Court held in favour of the plaintiff on the first ground, but for want of notice held that he was not entitled at that stage to evict the defendants. Then after due notice given, the plaintiff again sued to eject the defendants. They again pleaded the *mulgeni* lease. The Court held that that defence was not open to them, as it was barred by *res judicata.* On appeal, *held*, that the defence was barred by *res judicata* ; for the decision of the Court in the earlier suit in favour of the plaintiff upon the first part of his prayer found a place in the decretal order and was as much decreed as the other part of the prayer which in the second part of that decretal order was rejected. MOTA HOLIAPPA *v.* VITHAL GOPAL (1916)

I. L. R. 40 Bom. 662

5. ——— *Res judicata*—*Decision of a Boundary Settlement Officer—Grounds of decision, if res judicata—Boundaries Act (XXVIII of 1860), ss. 24 and 25—Estoppel.* Where a Boundary Settlement Officer

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 11**—*concld.*

decided under the Boundaries Act (XXVIII of 1860) that certain lands did not belong to a *mittadar* but to the Government on the ground that they never had formed part of the area of the *mitta*, and no suit was brought by the *mittadar* to contest the decision under s. 25 of the Act. *Held*, that the ground of the decision as well as the actual decision was *res judicata* in a subsequent suit instituted by the *mittadar* to recover the lands as having formed part of the *mitta* or in the alternative for a reduction of the *peshkash* of the *mitta Kamaraju* v. *The Secretary of State for India, I. L. R. 11 Mad. 309*, followed. *Per* SESHAGIRI AYYAR. J. The decision of the Survey Officer is binding upon the parties whether it is *res judicata* in the technical sense in which the term is used in the Civil Procedure Code or not. *Krishna Behari Roy* v. *Brojeswari Chowdarnee, L. R. 2 I. A. 283, 286* and *In re Bank of Hindustan, China and Japan (Alison's Case), L. R. 9 Ch. App. 1*, referred to. MUTHAMMAL *v.* THE SECRETARY OF STATE FOR INDIA (1916) . . **I. L. R. 39 Mad. 1202**

——— **s. 11 ; O. II, r. 2**—

See U. P. LAND REVENUE ACT (III OF 1901), ss. 111, 112, 233 (*k*).

I. L. R. 38 All. 302

——— **s. 16** (*d*)—*Maintenance, suit for—Charge of maintenance—Right or interest in immoveable property—Jurisdiction.* Plaintiff S filed a suit a Poona Court against her daughter-in-law L (defendant No. 1) and her father (defendant No. 2) both of whom resided in a native state beyond the jurisdiction of the Court for a declaration that she was entitled to a maintenance allowance and sought to make the same a charge on the immoveable property of L within the jurisdiction of the Court. The lower Court held that it had no jurisdiction to try the suif as the claim for maintenance was not one for the determination of any right to, or interest in, the immoveable property as required by clause (*d*) of s. 16 of the Civil Procedure Code. The plaintiff having appealed : *Held*, that the Court had jurisdiction to proceed against defendant No. 1 as the question whether or not plaintiff was entitled to a right or interest in the immoveable property by way of charge as security for maintenance which might be decreed, was a question directly within the terms of section 16 (*d*) of the Civil Procedure Code, 1908. *Held*, also, that the Court had no jurisdiction against defendant No. 2. SITABAI *v.* LAXMIBAI (1915) . . . **I. L. R. 40 Bom. 337**

——— **s. 24**—

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), s. 17.

I. L. R. 38 All. 425

——— **s. 24** (*1*) (*a*)—

See DIVORCE ACT (IV OF 1869), ss. 3, 16, 37, 44.

I. L. R. 40 Bom. 109

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **s. 24, cl. (1) (b)—**

See CIVIL RULES OF PRACTICE, R. 161 (*a*).
I. L. R. 39 Mad. 485

——— **s. 44, O. XXI, r. 7—**

See FOREIGN DECREE
I. L. R. 40 Bom. 551

——— **s. 47**—*Suit for money—Death of Defendant during suit leaving will—Heirs substituted in ignorance of will and decree against heirs—Execution against estate—Objection by executor upheld—Executor, if bound—Appeal—Remedy of decree-holder—Suit upon judgment, if lies—Limitation Act (IX of 1908), Sch. I, Art. 122.* M. the defendant in a suit for recovery of money having died during its pendency leaving a will whereby he had appointed the wives of his sons executrices to his estate, the plaintiff who was unaware of the existence of the will substituted his sons in his place on the records without objection, and got a decree. Execution of the decree against the estate of M was opposed by the executrics : *Held*, that the executrices were not bound by the decree and the decree could not be executed against the estate in their hands. *Quœre :* Whether the order of the executing Court dismissing the application on the objection of the executrices was not an order under s. 47, merely because the executrices could not in popular language be called representatives of the sons of the deceased debtor. *Held*, that the executrices were not representatives of the judgment-debtors inasmuch as they were not bound by the decree. That the remedy of the decree-holder was either (i) to have the decree vacated, the suit restored, the executrices brought on the record and a new decree made against them ; or (ii) to institute a suit on the judgment and obtain a decre thereon against the executrices. *Ashibhusan* v. *Pelaram, 18 C. L. J. 362 : s. c. 18 C. W. N. 173,* and *Prosunno Chander* v. *Kristo Chaitanya, I. L. R. 4 Calc. 342. Quœre :* Under what circumstances a suit lies upon a judgment passed by a Court in British India. Where a Court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, on which an action to enforce the judgment may be maintained provided the judgment cannot be enforced in some other way. The Limitation Act cannot give rise to a cause of action where none exists independently of the provisions thereof. KALI CHARAN NATH *v.* SUKHODA SUNDARI DEVI (1915)
20 C. W. N. 58

——— **s. 47, O. XXII, r. 10—**

——— *Decree in mortgage suit—Preliminary decree—Final decree, procedure to, not by way of execution—Application to continue the suit after preliminary decree, order disallowing, not appealable.* After the passing of the preliminary decree in a mortgage suit, the suit is continued until the stage of the final decree is reached. *Ashfaq Husain* v. *Gauri Sahai, I. L. R. 33 All. 264* and *Munna Lal* v. *Sarat Chunder, 21 C. L. J. 118,* explained. Where under the will of *A*, his executors filed a suit on a mortgage and one of them died before, and the other after passing of the preliminary decree, and his senior widow made an application to continue the suit: *Held*, that an order disallowing such an application is not appealable, under Order XXII, rule 10 of the Code. *Ferrall* v. *Curran, L. R. 2 Ir. R. 470,* followed. LAKSHMI ACHI *v.* SUBBARAMA AYYAR (1915)
I. L. R. 39 Mad. 488

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 47**—*concld.*

——— **s. 47 (3), O. XXI, r. 16**—*Assignee's application for execution opposed by attaching creditor of decree—Matter, if appelable.* S. a purchaser of a decree, having applied for execution after substitution of his name as a decree-holder, M a creditor of the judgment-debtor who had attached the decree opposed the application alleging that S's purchase was fraudulent and *benami*. The first Court upheld the objection, but the Appellate Court found S's purchase to be good and valid *Held*, that the order came within the purview of sub-s. (*3*) to s. 47 of the Civil Procedure Code even though (M's objection apart) the matter came under O. XXI, r. 16 of the Code. Provision of s. 47, sub-s. (*3*) distinguished from the corresponding provision of s. 244 of the old Code. *Ram Chunder* v. *Hamiran, 11 C. W. N. 433,* not followed. MOHINI MOHAN MAJUMDAR *v.* SURENDRA CH. DEY (1916) . . **20 C. W. N. 679**

——— **ss. 47, 73, 104**—*Rateable distribution, order for—Right of appeal—Mortgage-decree—Provision for execution personally against the mortgagor—Application for execution of sale of mortgaged property—Sale held—Application, not disposed of—Sale of other properties by other decree-holders—Proceeds paid into Court—Application for rateable distribution by holder of mortgage decree, if maintainable—Application for execution, not formally disposed of, if pending.* An order for rateable distribution under s. 73 of the Code of Civil Procedure is appealable if it was passed between the parties to the suit in which the decree was passed and related to the execution of the decree and so fell under the provisions of s. 47 of the Code. S. 73 of the Code does not say that no appeal shall lie against orders passed under it ; nor does the omission to provide for an appeal against such orders in s. 104 of the Code deprive a party of the right of appeal conferred by other provisions of the Code. Where an application for execution prayed for specific reliefs and they were all granted by the Court and obtained by the decree-holder, but no final order of disposal was passed by the Court on the application, it must be deemed to be a pending application for execution for purposes of s. 73 of the Code. KARVETNAGAR, RAJAH OF *v.* VENKATA REDDI (1915) . . **I. L. R. 39 Mad. 570**

——— **s. 48—**

See MORTGAGE-DECREE.
I. L. R. 39 Mad. 544

CIVIL PROCEDURE CODE (ACT V OF 1908)— *contd.*

——— **s. 48**—*Limitation—S. 48 if would govern applications for execution of mortgage-decrees passed when the previous Code (XIV of 1882) was in force—S. 6 General Clauses Act (X of 1897) —Rights and remedies under a repealed Act—Acknowledgment—S. 19 of the Limitation Act (IX of 1908).* In support of an application for execution made in 1913 for realisation of the balance of the decretal amount due on a mortgage-decree made absolute in 1898, s. 6 of the General Clauses Act, 1897, which provides that the repeal of an enactment shall not affect any right acquired under the enactment repealed or affect any legal proceeding or remedy in respect of any such right was relied on and it was contended that s. 48 of the Code of Civil Procedure (Act V of 1908) did not apply as the decree was passed when the previous Code Act (XIV of 1882) was in force, and inasmuch as s. 230 thereof did not apply to mortgage decrees, the application was not time-barred. *Held*, that the application was governed by s.48 of the present Code (Act V of 1908) and was time-barred as it could not be said that the decree-holder acquired any right under the Code of Civil Procedure of 1882 within the meaning of s. 6 of the General Clauses Act, 1897. *Bisseswar Sonamut* v. *Jasoda Lal, I. L. R. 40 Calc. 704 : s. c. 17 C. W. N. 622*, and *Manjhoori Bibi* v. *Akhel Mahmud, 17 C. W. N. 889*, followed. *Kaunsilla* v. *Ishri Singh, I. L. R. 32 All. 499*, dissented from. *Held*, further, that assuming that there was an acknowledgment of liability within the meaning of s. 19 of the Limitation Act by the judgment-debtor in March 1902, it would give the decree-holder only three years from the time of such acknowledgment within which the decree-holder would be entitled to apply for further execution of the decree. That the passing of the Code of 1908 could not be held to give retrospective operation to the acknowledgment of 1902 in such a way as to give the decree-holder a fresh period of 12 years within which to apply for further execution. The words " a fresh period of limitation " in s. 19 of the Limitation Act do not refer to the term of 12 years prescribed by s. 48 of the Code of Civil Procedure. KRISHNA DAYAL GIR *v.* SAKINA BIBI (1916)

20 C. W. N. 952

——— **s. 60** (*c*)—*Exemption from attachment of agriculturist's house—Agriculturist, who is—Plea claiming exemption must be set up and proved by judgment-debtor.* The agriculturist whose house is protected from attachment by s. 60 (*c*) of the Code of Civil Procedure is one belonging to the class of common agriculturists that are known in Bengal, whose main source of livelihood is by cultivation, *i.e.*, the raiyat who tills the field. The plea that he is an agriculturist within the meaning of the section has got to be set up and proved by the judgment-debtor. ASHMATULLA SARKAR *v.* RAN MAHMUD CHOWDHURY (1915) **20 C. W. N. 874**

——— **s. 66**—

See BENAMI PURCHASER.

I. L. R. 43 Calc. 20

CIVIL PROCEDURE CODE (ACT V OF 1908)— *contd.*

——— **s. 80**—*Notice of suit—Suit against Government—Government threatening to demolish property, the subject of suit—Suit within two months of the notice.* On the 2nd May 1912, the plaintiff gave notice to Government under s. 80 of the Civil Procedure Code (Act V of 1908) of a suit which he intended to file for a declaration of ownership of certain property. Shortly afterwards, the Mamlatdar threatened to demolish the property which was the subject matter of the notice. The plaintiff thereupon filed the present suit against Government on the 19th June 1912. The defendant contended that the suit was bad under s. 80 as having been instituted within two months of the date of the notice. *Held*, that the suit was not bad under s. 80, inasmuch as the defendant's agent had during the currency of the notice threatened to demolish the property in dispute. SECRETARY OF STATE FOR INDIA *v.* GULAM RASUL (1916)

I. L. R. 40 Bom. 392

——— **s. 89, O. XXIII, r. 3, Second Schedule, —Paras. 14, 15, 20 and 21**—*Civil Procedure Code (Act XIV of 1882), s. 375—Indian Arbitration Act (IX of 1899)—Reference to arbitration without intervention of Court, while suit pending—Procedure to enforce award—Award, not adjustment of suit under Order XXIII, rule 3.* The plaintiff sued on the 11th of June 1915, to recover a sum of Rs. 5,353-9-6 as the price of goods sold to the defendant. The defendant in his written statement pleaded *inter alia* that the goods supplied by the plaintiff were not of the quality agreed upon by the parties. On the 21st of August, 1915, the parties without the intervention of the Court agreed to refer the matters in dispute between them concerning the contract referred to in the plaint in respect of which the suit had been filed in High Court, to the arbitration of M. D. and R. M. The arbitrators made their award on the 28th of October, 1915 whereby they awarded to the plaintiff a sum of Rs. 4,001-4-0 with interest at 6 per cent. till the date of payment. The award was filed by the arbitrators on the 10th of December, 1915. On the 10th of January, 1916 the plaintiff took out a notice of motion, for an order that the adjustment of the suit arrived at between the plaintiff and the defendant as stated in the plaintiff's affidavit should be recorded under Order XXIII, rule 3 of the Civil Procedure Code, and a decree in accordance therewith should be passed. The defendant disputed the legality of the award on two grounds, first, that the arbitrators exceeded their jurisdiction and decided something which was not within their power to decide and secondly, that they refused an opportunity to the defendant to call witnesses, or that after they had given him to understand they would adjourn the matter to enable him to call evidence they published the award without giving him any such opportunity. *Held*, (i) that the plaintiff had adopted a wrong procedure in applying for a decree on an award under Order XXIII, rule 3, (ii) That the defendant was entitled to be heard on the objections raised by him

CIVIL PROCEDURE CODE (ACT V OF 1908)— *contd.*

——— s. 89—*concld.*

under paragraph 21 of the Second Schedule of the Civil Procedure Code. *Pragdas* v. *Girdhardas, I. L. R 26 Bom. 76*, and *Ghellabhai* v. *Nandubai, I. L. R. 21 Bom. 335*, considered. *Per* MACLEOD J. —No application can be made to obtain a decree on an award except as provided for in s. 89 of the Code of Civil Procedure (Act V of 1908)....Under that section the provisions of the Second Schedule govern all arbitrations in a suit, or otherwise, except such arbitrations as are specially excluded. An arbitration between the parties to a suit without an order of the Court has not been excluded and must, therefore, come under the provisions which deal with arbitrations without the intervention of the Court. SHAVAKSHAW *v.* TYAB HAJI AYUB (1916) . **I. L. R. 40 Bom. 386**

——— s. 92—

See HINDU LAW—WILL.
I. L. R. 39 Mad. 365

1. ——— *Public trust, cause of action as to—Practice of District Courts to enquire first whether subject-matter of trust is public—Public trust, if may be declared, when suit dismissed for want of cause of action—Costs, if payable out of trust estate when no cause of action—Findings in the judgment, immaterial to the decision, if appealable—S. 115 C. P. C., revision under, of decree for costs.* Where the plaintiff's suit is dismissed for want of cause of action, the defendant has no right of appeal against some findings of fact which are not in his favour. *Thakur Magundeo* v. *Thakur Mahadeo Singh, I. L. R. 18 Calc. 647* and *Jamaitunnissa* v. *Lutfunnissa, I. L. R. 7 All. 606*, followed. It has generally been the practice of the District Courts to enquire first into the question whether the trust is a public trust or not and this is probably a convenient course. Under s. 92, C. P. C., no cause of action arises save in a case of alleged breach of a trust for a public purpose or where the directions of the Court are deemed necessary for the administration of such trust. Where the plaintiffs after obtaining sanction from the Advocate-General instituted a suit against the defendant for his removal from the management of a trust which was alleged by the plaintiffs to be a public trust and the defence was that the trust was not a public trust and that there was no misfeasance, and the District Judge found that the trust was indeed a public trust but that the defendant had not been guilty of misfeasance and so dismissed the suit for want of cause of action with costs to be paid out of the trust estate to the plaintiffs because the defence was that the trust was not a public trust: *Held*, that when the Judge had come to the decision that there was no cause of action for the suit he could not record a decision binding on the parties that the trust was a public trust and he could not make an order for the payment of costs from the estate as a public trust. *Held*, further, that the order for costs out of the estate was without jurisdiction within the meaning of s. 115, C. P. C. BRIJ BEHARI LAL *v.* SHIVANATH PRASAD (1916) . . **20 C. W. N. 1354**

CIVIL PROCEDURE CODE (ACT V 1908)— *—contd.*

——— s. 92—*contd.*

2. ——— *Suit by a trustee against a co-trustee—Administration suit—Will—Charitable or religious trusts—Jurisdiction—Practice.* The plaintiff as one of the two surviving executors of the will of one Harjivandas Purshottam, dated the 15th June 1892, sued the defendant executor in the First Class Subordinate Judge's Court at Ahmedabad—(*a*) for accounts of the property of the deceased from 1899 and onwards, (*b*) for an injunction restraining the defendant from further management of the estate without plaintiff's consent, and (*c*) for an injunction restraining the defendant from interfering with the plaintiff's management of the said estate. The will showed that the property was worth Rs. 89,500 out of which Rs. 19,500 were set apart for legacies and the balance of Rs. 70,000 was bequethed to purely charitable and religious purposes. The Subordinate Judge held that he had no jurisdiction to entertain the suit as it fell within the purview of s. 92 of the Civil Procedure Code, 1908. The joint Judge, in appeal, was of opinion that the suit as framed by the plaintiff was to obtain the assistance of the Court for the purpose of securing co-operation with the defendant in the due administration of the estate according to the provisions and direction in the will and in so far as it sought this relief it did not come under s. 92 of the Civil Procedure Code, 1908. He, therefore, reversed the decree and remanded the case. The defendant having appealed: *Held*, affirming the order of remand made by the Joint Judge, that the Subordinate Judge had jurisdiction to entertain the suit, for there was nothing in the plaint to suggest that the suit was framed in relation to any charitable or religious trusts and the plaint contained no prayer for relief of any of the kinds specified in s. 92 of the Civil Procedure Code, 1908. *Per* CURIAM: If any questions relating to charitable bequests should arise in the present case before the Subordinate Judge, his proper course would be to give notice to the Advocate General in order that that officer might decide whether any action should be taken under s. 92 of the Civil Procedure Code in order to get any of the specific reliefs referred to in that section. It would be quite possible for the Subordinate Judge to continue the administration of the estate up to the point of separating the funds appropriated for particular charities as to which schemes would have to be framed, and holding those funds in the possession of a Receiver until the Advocate General or the Collector had obtained the directions of the Court, if such were necessary with reference to the disposal of those funds under some suitable scheme. Such directions of course would have to be taken from the District Court under s. 92. BAPUJI JAGANNATH *v.* GOVINDLAL KASANDAS (1916) . . . **I. L. R. 40 Bom. 439**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

s. 92—*concld.*

3. ——— *Suit for administration of religious wakf property—Court of Wards Act (Bom. Act I of 1905), ss. 31 and 32—Court of Wards added as guardian ad litem in appeal—Omission to name such a guardian from the commencement not fatal to the suit—suit not bad for want of notice under s. 31 of the Court of Wards Act—Cross objections—Stamps.* The plaintiffs instituted a suit under s. 92 of the Civil Procedure Code, 1908, for the administration and management of a religious wakf property against the trustees of the institution. Out of the four trustees the District Judge found defendants Nos. 1 to 3 to be defaulting trustees and ordered defendant No. 1 to refund Rs. 6,000 to the institution. In providing for the appointment of new trustees, however, the Judge included defendant No. 4 as one of the trustees though he was found liable in respect of costs. Aggrieved by this the plaintiff appealed to the High Court where, pending the appeal, the Court of Wards as the guardian *ad litem* of 1st defendant was added as a party-respondent and cross-objections were filed on its behalf to the effect that the suit was bad under s. 32 of the Court of Wards Act, 1905, and that no notice having been given to the Court of Wards as required by s. 31 of the Act, the decree was not binding on defendant No. 1. The plaintiffs-appellants contended that the cross-objections were not properly stamped. *Held*, that the cross-objections must be stamped as on an appeal relating to the sum of Rs. 6,000 decree against 1st defendant. *Held*, also, that the suit was not bad on the ground that the statutory notice provided for by s. 31 had not been given since it was a suit relating to the property of a religious institution and not to the property of the 1st defendant. *Held*, further, that the suit was not bad under s. 32 of the Court of Wards Act as the section did not say that if the Court of Wards was not named as guardian from the commencement the suit was bad. The omission might under the circumstances be treated as a mere defect or irregularity in procedure not affecting the merits of the case or the jurisdiction of the Court and be corrected under s. 152 of the Civil Procedure Code, 1908. *Rup Chand* v. *Dasodha, I. L. R. 30 All. 55* and *Bibi Walian* v. *Banke Behari Pershad Singh, L. R. 30 I. A. 182*, followed. SAYAD AMIR SAHEB *v.* SHEKH MASLEUDIN (1916) **I. L. R. 40 Bom. 541**

——— **s. 96, cl. (3); O. XXIII, r. 3; O. XLIII, r. 1, cl. (m)**—

See COMPROMISE **I. L. R. 43 Calc. 85**

——— **s. 97; O. XXXIV, rr. 1, 5**—

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 88, 89. **I. L. R. 40 Bom. 321**

——— **s. 98**—

See INCUMBRANCE . **I. L. R. 43 Calc. 558**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

s. 104 (*f*)—*Arbitration—Application to file an award in an arbitration made without the intervention of the Court—Appeal—Duties of arbitrator.* *Held*, that an appeal lies from an order directing the filing of an award in an arbitration made without the intervention of the Court. *Held*, further, that in an arbitration proceeding if the parties come to terms on a certain point it does not absolve the arbitrator from passing judgment on that point incorporating the terms of the compromise in the award. HARI KUNWAR *v.* LAKHMI RAM JAIN (1916) **I. L. R. 38 All. 380**

——— **ss. 104, 117; O. IX, rr. 8, 9**—

See APPEAL . **I. L. R. 43 Calc. 857**

——— **s. 107; O. XLI, rr. 23, 25**—

See REMAND **I. L. R. 43 Calc. 148, 938**

——— **s. 109**—*Appeal to His Majesty in Council—"Substantial question of law"—Position of holder of certificate under the Succession Certificate Act, 1889.* *Held*, that the nature of the legal position of a person who has collected debts of a deceased person by virtue of his being the holder of a succession certificate granted under the provisions of the Succession Certificate Act, 1889, is a substantial question of law such as would support the granting of special leave to appeal to His Majesty in Council. NAJM-UN-NISSA BIBI *v.* AMINA BIBI (1916) . . . **I. L. R. 38 All. 188**

——— **s. 109, cl. (a); O. XLI, r. 23**—*Appeal to His Majesty in Council—"Final order"—Order of remand which decided finally only one issue out of several.* *Held*, that an order of remand made by the High Court which decided finally only one issue out of several which were raised by the proceedings before the Court of first instance, which were proceedings under rule 17 of the second schedule to the Code of Civil Procedure, was not a "final order" within the meaning of section 109, clause (*a*) of the Code. NURI MIAH *v.* THE GANGES SUGAR WORKS, LIMITED (1915) **I. L. R. 38 All. 150**

——— **s. 110**—

1. ——— *Appeal to Privy Council—Valuation of appeal—Appealable amount subject-matter of appeal—Suit to enforce mortgage—Person made defendant as having adverse claim on the mortgaged property—Appeal on rejection of her claim by High Court.* In a suit to enforce a mortgage for Rs. 2,000, the amount due upon which was Rs. 38, 000, the mortgagee (respondent) asked for payment or for a sale of the mortgaged property. Besides the parties who claimed under the mortgagor, the appellant, who set up an adverse claim to a portion of the mortgaged property, and the person through whom she claimed were made defendants and they alone defended the suit. The Subordinate Judge allowed a moiety of her claim, but on appeal the High Court held that she had no title to any of the property. The High Court granted her leave to appeal to His Majesty in

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **s. 110**—*contd.*

Council under s. 110 of the Civil Procedure Code, 1908, on the ground that as the mortgage decree imposed on the property a liability for Rs. 38,000, the subject-matter of the appeal was a sum exceeding Rs. 10,000. *Held*, by the Judicial Committee (on a preliminary objection that the appeal was not maintainable as the subject-matter of it was below the appealable value), that as between the respondent seeking to enforce his mortgage and the appellant it was quite immaterial what the amount of the mortgage was, and that the subject-matter in dispute was not Rs. 38,000 but simply the value of the property the appellant claimed, which was not shown to be of the amount prescribed by s. 110 of the Civil Procedure Code, 1908. RADHA KUNWAR *v.* REOTI SINGH (1916) **I. L. R. 38 All. 488**

2. ——— *Privy Council—Leave to appeal—Suit for declaration and injunction tried by the Second Class Subordinate Judge—Value of the subject-matter can be shown by evidence for the purposes of the leave.* A suit for declaration and injunction, in which the claim was valued at Rs. 135, was tried by a Subordinate Judge of the Second Class. The decree was confirmed by the District Judge, but reversed by the High Court on second appeal. The plaintiff having applied for leave to appeal to the Privy Council, the defendant contended that as the plaintiff himself had elected to value his suit at only Rs. 135 and conducted it in the Court of the Subordinate Judge, the limit of whose pecuniary jurisdiction was Rs. 5,000, he could not contend that the subject-matter of the suit was worth Rs. 10,000. *Held*, overruling the contention, that the suit being one for declaration and injunction, the plaintiff by suing in the Second Class Subordinate Judge's Court seemed to have made neither directly or indirectly any sort of representation to the defendant as to the real or market value of the property to be affected, as distinguished from the fiscal value which, as the law allowed him to do, he placed upon the relief which he was seeking. *Hirjibhai* v. *Jamshedji, 15 Bom. L. R. 1020*, distinguished. MOHANLAL NAGJI *v.* BAI KASHI (1916). **I. L. R. 40 Bom. 477**

3. ——— *Right of appeal to His Majesty in Council—Amount or value of the subject-matter of the suit, less than ten thousand rupees—Valuation for appeal, mode of—Mesne profits from date of suit to date of petition for certificate to appeal, if can be added—Value with mesne profits, more than ten thousand rupees—"Involve directly" in s. 110, Civil Procedure Code, meaning of—Privy Council Appeals Act (VI of 1874).* Where the amount or value of the subject matter of the suit in the Court of first instance was less than ten thousand rupees, but the amount or value of the subject-matter in dispute in the appeal to His Majesty in Council exceeded that sum owing to the addition of the claim for mesne profits for the period between the institution of the suit and the filing of the petition for a certificate to appeal: *Held*, that the case did not satisfy the provisions of either the first or the second paragraph of s. 110 of the Code of Civil Procedure, and that leave to appeal to His Majesty in Council could not be granted. *Per* WALLIS C.J. The words "involve directly," contained on the second paragraph of s. 110 of the Code, cannot be read as including cases which involve nothing but the actual subject matter in dispute in the appeal. *Moti Chand* v. *Ganga Prasad Singh, I. L. R. 24 All. 174; 29 I. A. 40*, followed. *Dalgleish* v. *Damodar Narain Chowdhry, I. L. R. 33, Calc. 1286*, and *Basanta Kumar Roy* v. *Secretary of State for India, 6 Ind. C. 792*, dissented from. *Mohideen Hadjiar* v *Pitchey, [1893] A. C. 193*, explained. *Per* SRINIVASA AYYANGAR J. If the operation of the decision is confined only to the particular object matter, clause (2) of s. 110 does not apply, and unless the case satisfies the conditions in clause (1), there is no right of appeal. If the decision, beyond awarding relief in respect of the particular object matter of the suit, affects rights in other properties, clause (2) would apply: also if the matter in dispute is one which is incapable of valuation, as in the case of easements, clause (2) may apply. SUBRAMANIA AYYAR *v.* SELLAMMAL (1915) **I. L. R. 39 Mad. 843**

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **s. 110**—*concld.*

——— **ss. 110, 115**—

See LETTERS PATENT APPEAL. **I. L. R. 43 Calc. 90**

——— **s. 113; O. XLI, r. 1**—

See SPECIFIC PERFORMANCE. **I. L. R. 43 Calc. 59**

——— **ss. 114, 115, 121; O. XLVII** (*1*)—

See ARBITRATION, **I. L. R. 43 Calc. 290**

——— **s. 115**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXIV, RR. 3, 8. **I. L. R. 39 Mad. 882**

See CRIMINAL PROCEDURE CODE, S. 476 **I. L. R. 38 All. 695**

See SANCTION FOR PROSECUTION. **I. L. R. 43 Calc. 597**

1. ——— *High Court—Extraordinary civil jurisdiction—Temporary injunction restraining a Hindu widow from adopting—Application against the order—'Case' meaning of—Jurisdiction under s. 5 of Bombay Regulation II of 1827—High Courts Act (24 & 25 Vic., Ch. 104), s. 9—General Repealing Act (XII of 1873).* In the course of a pending suit, the first Court granted a temporary injunction restraining defendant No. 1 from making an adoption; but afterwards dissolved it. On appeal, the District Judge granted the temporary injunction. The defendant No. 1 having applied to the High Court against the order, a preliminary objection was taken that the application was not competent under s. 115 of the Civil Procedure Code.

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **s. 115**—*contd.*

Held, overruling the objection, that the application was competent under s. 115 of the Civil Procedure Code Act (V of 1908), as the order was a " case decided in which no appeal lies " within the meaning of the section. *Held*, further, that the order was open to consideration under the wider provisions of s. 5 of Regulation II of 1827, continued in force by virtue of s. 9 of the High Courts Act, 1861, and saved from repeal by the operative sections of the General Repealing Act (XII of 1873). *Per* BATCHELOR J. " The word ' case ' which occurs in s. 115 of the Civil Procedure Code (Act V of 1908), is a word of wide or comprehensive import and clearly covers a far larger area than would be covered by such a word as ' suit ' or ' appeal.' " " Inasmuch as s. 115 is merely an empowering section granting certain jurisdiction to the High Court, and as the use or exercise of that jurisdiction will, within the prescribed limits, be regulated by the discretion of the High Court, the section ought to receive rather a liberal than a narrow interpretation." BAI ATRANI *v.* DEEPSING BARIA THAKOR (1915)
I. L. R. 40 Bom. 86

2. ——— *High Court—Revisional jurisdiction—Decision of District Court—Bombay District Municipalities Act (Bom. Act III of 1901), s. 160.* No application can be made under the revisional jurisdiction of the High Court from the decision of a District Court under clause (*3*) of s. 160 of the Bombay District Municipalities Act (Bombay Act III of 1901). MUNICIPALITY OF BELGAUM *v.* RUDRAPPA (1916) . **I. L. R. 40 Bom. 509**

3. ——— *Wrong decision of the lower Appellate Court that the first Court had or had not jurisdicton to entertain a suit—Revision—Power of High Court to interfere in. Held*, by the FULL BENCH (SADASIVA AYYAR J. dessenting), that the High Court has jurisdiction to interfere under s. 115, Civil Procedure Code (Act V of 1908) where an Appellate Court erroneously decides in the exercise of its admitted jurisdiction as an Appellate Court, that the Court of first instance had or had not jurisdiction to entertain a suit. Case-law on the subject reviewed. *Per* WALLIS C.J: The power of the High Court to interfere in such matter is under the third part of s. 115. *Per* SUNDARA AYYAR J: The power of the High Court to interfere in such matters is under the first part of s. 115. The function of an Appellate Court is to do that which the first Court ought to have done. *Per* SADASIVA AYYAR J : Under none of the three parts of s. 115 has the High Court power to interfere in such matters. Clauses (*a*) and (*b*) of s. 115 apply only to jurisdiction of the Court whose decree or order is sought to be revised, to pass such order or decree and not to its decision on the jurisdiction of some other Court. The words " acted illegally " in s. 115, Civil Procedure Code, mean " giving a wilfully perverse, but not a mere erroneous, decision on a question of law."

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **s. 115**—*concld.*

ATCHAYYA *v.* SRI SEETHARAMACHANDRA RAO (1912) . . . **I. L. R. 39 Mad. 195**

——— **ss. 117, 151 ; O. XLI, r. 10**—

See INSOLVENCY **I. L. R. 43 Calc. 243**

——— **s. 141 ; O. XL, r. 1**—

See COMMON MANAGER .
I. L. R. 43 Calc. 986

——— **s. 144**—

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), s. 22.
I. L. R. 40 Bom. 194

——— *Execution of decree—Decree reversed on appeal—Bonâ fide auction purchaser under original decree.* Restitution cannot be obtained under s. 144 of the Code of Civil Procedure as against a *bonâ fide* purchaser for value at an auction sale held by a Court which had jurisdiction to hold the same. *Rewa Mahton* v. *Ram Kishen Singh, I. L. R. 14 Calc. 18, Zain-ul-abdin Khan* v. *Muhammad Asghar Ali Khan, I. L. R. 10 All. 160*, and *Abbas Husain Khan* v. *Dilband Begam, 16 Oudh Cases 225*, referred to. PIARI LAL *v.* HANIF-UN NISSA BIBI (1916)
I. L. R. 38 All. 240

——— **s. 145 ; O. XXXIV, r. 14**—

——— *Execution of decree—Security for default of judgment-debtor—Mode of enforcement of security.* On attachment of certain property under a decree by a decree-holder, a third party came forward claiming the attached property as his own but subsequently entered into a compromise with the decree-holder whereby he made himself responsible for payment of the decretal amount and executed a security bond in which, in addition to undertaking a personal liability for the judgment-debtor's default, he also hypothecated certain property : *Held*, that default having been made by the judgment-debtor, the decree-holder was at liberty to enforce the security in the manner provided for by s. 145 of the Code of Civil Procedure, and that Order XXXIV, rule 14, was no bar to his enforcing it against the hypothecated property as well as any other property of the surety. *Janki Kuar* v. *Sarup Rani, I. L. R. 17 All. 99*, referred to. MUKTA PRASAD *v.* MAHADEO PRASAD (1916) . . . **I. L. R. 38 All. 327**

——— **s. 148**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXIV, R. 8, proviso.
I. L. R. 39 Mad. 876

——— **s. 153**—*Partition suit—Omission by plaintiff to put in some properties in the list of joint properties in the plaint—Dismissal of suit—Power of amendment of plaint by the first Court as also by the Appellate Court. Per* JWALA PRASAD J. In a suit for partition of joint family property by a Hindu, all the properties must be included in the action, and the reason for this proposition is to

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 153**—*concld.*

save the parties from multiplicity of proceedings. If by inadvertence, mistake, or fraud of any of the parties, some of the joint properties are not partitioned in the original suit, there will be no bar after the partition to have the properties, excluded at the first partition, divided when the mistake or fraud is discovered. *Jogendra Nath Mukherji* v. *Jugobandhu Mukherji, I. L. R. 14 Calc. 122*, and *Jogendra Nath* v. *Baladeo Das, I. L. R. 35 Calc. 961*; *s. c. 12 C. W. N. 127*, referred to. O. VI, r. 17, enables the Court to allow either party to alter or amend his pleadings at any stage on such terms as may be just. S. 153, C. P. C., empowers the Court to make itself all necessary amendments for the purpose of determining the real questions or issues raised in the action. This power is vested both in the original as well as in the Appellate Court. *Srimohan Thakur* v. *MacGregor, I. L. R. 28 Calc. 769*, approved. *Per* ATKINSON J. To avoid multiplicity of suits, the law has endowed all Courts in all countries with just and most ample powers of amendment. The widest power of amendment is given not only to the primary Court but to the High Court, which enables the Court to try all matters properly in dispute between the parties. MUKUNDA LAL CHAKRAVARTI *v.* JOGESH CHANDRA CHAKRAVARTI (1916) . **20 C. W. N. 1276**

——— **O. I, r. 1**—

See NUISANCE **I. L. R. 40 Bom. 401**

——— **O. I, r. 8**—*Suit by plaintiffs as representing the section of a caste to take account and to recover moneys belonging to the section—Meeting not properly convened—Suit opposed by numerous members of the section—Suit as representing the plaintiffs supported by a large number of the members—Representative suit not maintainable.* The caste of the Dasa Lad Banias of Broach was divided into two sections, known as the Mojumpurias and Sheherias. The accounts and the funds of each section were separately kept by defendant No. 1, who was the headman of the whole caste. The plaintiffs were authorised to bring the present suit at a meeting at the Mojumpuria section held on the 28th April 1909. It appeared that the meeting was irregularly convened. The plaintiffs brought the present suit, under Order I, rule 8 of the Civil Procedure Code, to take accounts of the funds belonging to the Mojumpuria section from defendant No. 1, and to recover from him the amount that might be found due on such accounts being taken. Out of the 183 members constituting the Mojumpuria section, 112 supported the plaintiffs' contentions ; whilst 70 members supported those of defendant No. 1. The first Court granted the reliefs sought : but the District Court disallowed the second relief. On second appeal : *Held*, that the suit as constituted must fail, for the plaintiffs could not represent nor sue on behalf of those numerous members of the Mojumpuria section who admittedly were in diametrical opposition to them in the present controversy. *Held*, also, that the plaintiffs could not call in aid the private expressions of consent obtained after suit filed so as to supply that authority which was admittedly lacking at the time when the suit was in fact filed. HARKISANDAS SHIVLAL *v.* CHHAGANLAL NARSIDAS (1915) **I. L. R. 40 Bom. 158**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. I, r. 8**—*concld.*

——— **O. I, r. 10**—*Suit instituted by administratrix after power as such had terminated—Bonâ fide mistake—Due care and attention if must be established.* For a *bonâ fide* mistake as contemplated by O. 1, r. 10 of the Civil Procedure Code, it is not necessary that the party who committed it should have exercised due care and attention. Where it is not deliberately but honestly made, the mistake is *bonâ fide*. NISTARINI DASYA v. SARAT CHANDRA MAZUMDAR (1915) **20 C. W. N. 49**

——— **O. I, r. 10** (*2*)—*Scope and effect of, as to powers of Courts in striking off and adding parties—Dismissing suit for non-prosecution, when plaintiffs compromise with only some of the defendants—Court if bound to pass a decree embodying the terms of the compromise under O. XXIII, r. 3—Appeal, if lies when no decree passed—Alternative remedy by way of revision under s. 115, C. P. C., if lies—Erroneous application of section of law, if open to revision under s. 115, C. P. C.* In a suit for dissolution of partnership and for accounts, the plaintiffs having received a large sum of money from some of the defendants, filed a compromise petition and asked for dismissal of the suit. The other defendants objected to the dismissal of the suit, praying that they might be made plaintiffs and allowed to continue the suit, and the plaintiffs, if necessary, might be made defendants. The Court held that it had no power under the new Civil Procedure Code to make the transposition of parties asked for, and hence dismissed the suit for non-prosecution. The objecting defendants then asked the Court to draw up a decree, so that they might appeal, but the Court did not draw up any decree. *Held*, that the Court had ample powers under the new Civil Procedure Code to make transposition of parties and it ought to have done that. That it was not bound to pass a decree under O. XXIII, r. 3, and no appeal lies against the order of dismissal. That the lower Court, having failed to exercise the discretion vested in it under O. I, r. 10, failed to exercise a jurisdiction vested in it in refusing to make the transposition prayed for, and hence that order is liable to be set aside on revision by the High Court. *Krishnabai* v. *Sonubai, 2 Bom. H. C. R. 310, Eduljee* v. *Vulleebhoy, I. L. R. 7 Bom. 167*, and *Saiyad Abdul Hak* v. *Gulam Jilani, I. L. R. 20 Bom. 677*, followed. BROJENDRA KUMAR DAS *v.* GOBINDA MOHAN DAS (1916) **20 C. W. N. 752**

——— **O. II, r. 2**—

1. ——— *Cause of action, splitting up of—Bar does not apply where causes of action are different.* On *T*'s death, his widow sold two of his survey numbers (403 and 404) to *D*, and

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. II, r. 2**—*contd.*

shortly afterwards sold survey No. 324 to *Z*, who was a brother of *D*, joint in estate. After the widow's death, *B*, a daughter of *T*, sued *D* and *T* (another daughter of *T*) to recover possession of survey No. 324; but the suit was at her request dismissed. *B* then having sold the three survey numbers to the plaintiff, the present suit was brought against the two daughters, and *D* and *Z*, to recover possession of the three survey numbers. The lower Courts dismissed the suit on the preliminary ground that since *B* omitted to sue in respect of survey numbers 403 and 404 in the first suit, the plaintiff was debarred from preferring his claim to those numbers in the present suit. The plaintiff having appealed. *Held*, that the suit was not barred by the provisions of Order II, rule 2 of the Civil Procedure Code inasmuch as the two sets of facts which required to be proved in both suits in order to enable the plaintiff to succeed were different sets of facts, and the causes of action accordingly were different. SONU VALAD KHUSHAL *v.* BAHINIBAI (1915) . . . **I. L. R. 40 Bom. 351**

2. ——— *Partition—Separate suits for property in different districts—Cause of action.* The plaintiff, as member of a joint Hindu family brought a suit for partition of certain property in the district of Sultanpur. He admitted that he was not in possession of this property, and paid an *ad valorem* court-fee on his plaint. This suit was settled by a compromise. Subsequently the plaintiff brought a separate suit in Allahabad for partition of some of the joint-family property situated in that district; but in this suit he alleged that he was in joint and undivided possession and paid a court-fee of Rs. 10 as on an ordinary partition suit. *Held*, that the omission of the Allahabad property from his suit in Sultanpur was not a bar to the plaintiff's second suit and that the case did not fall within Order II, rule 2, of the Code of Civil Procedure. *Mansa Ram Chakravarty* v. *Ganesh Chakravarty, 16 Indian Cases, 383, Ukha* v. *Daga, I. L. R. 7 Bom. 182*, and *Subba Rau* v. *Rama Rau, 8 Mad. H. C. R. 376*, referred to. RAM HARAKH *v.* RAM LAL (1916) **I. L. R. 38 All. 217**

3. ——— *Omission to sue for a portion of claim—Subsequent suit for that portion, if lies.* The plaintiff sued for the possession of a holding consisting of a homestead and arable lands attached thereto. He had previously sued for *khas* possession of that portion of the holding only which included the homestead on the allegation that the defendant had dispossessed him of the homestead. This suit was dismissed. *Held*, that as it appeared from the evidence in this case that plaintiff had been dispossessed of the arable land at the same time as the homestead, the whole suit was barred. The plaintiff having in the previous suit omitted to sue for a portion of his claim, namely, for the arable lands could not under O.II, r. 2 of the Code of Civil Procedure be permitted to sue for them subsequently. *Jibunti Nath Khan* v. *Shib Nath Chakraburty, I. L. R. 8 Calc. 819*, and *Pitapur Raja* v. *Suriya Roy, L. R. 12 I. A. 116 : s. c. I.L.R. 8 Mad. 520*, distinguished. KALI KUMAR CHUCKERBUTTY *v.* ASLAM (1914). **20 C. W. N. 163**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. II, r. 2**—*concld.*

——— **O. III, r. 4**—

See VAKALATNAMA **I. L. R. 43 Calc. 884**

——— **O. V, rr. 12, 17; O. IX, r. 13**—

See SUMMONS, SERVICE OF. **I. L. R. 43 Calc. 447**

——— **O. VIII, r. 5**—

See EX PARTE DECREE. **I. L. R. 43 Calc. 1001**

——— **O. IX, r. 2**—*Dismissal of suit—Appeal. Held*, that no appeal lies from an order dismissing a suit under Order IX, rule 2 of the Code of Civil Procedure on the ground that summons had not been served on the defendants in consequence of the failure of the plaintiff to deposit the requisite court-fee for such service. *Lucky Churn Chowdhry* v. *Budurr-un-nisa, I. L. R. 9 Calc. 627, Parbati* v. *Toolsi Kapri, 20 Indian Cases, 1*, followed. LACHMI NARAIN *v.* DARBARI LAL (1916) **I. L. R. 38 All. 357**

——— **O. IX, r. 9; O. XLIII, r. 1** (*c*)—*Application by judgment-debtor under O. XXI, r. 90 to set aside sale—Dismissal for default—Application for restoration, rejection of—Order if appealable—Application to set aside sale, if "suit."* O. IX, r. 9 of the Civil Procedure Code is applicable to applications for setting aside sales which have been dismissed for default. *Diljan Nichha Bibee* v. *Hemanta Kumar Ray, 19 C. W. N. 758*, and *Safdar Ali* v. *Kishun Lal, 12 C. L. J. 6*, relied on. An application to set aside a sale is a proceeding which may terminate in an adjudication such as is referred to in s. 2 of the Civil Procedure Code, and if the question had been *res integra*, the Court would have held that it was a suit within the meaning of O. XLIII, r. 1, cl. (*c*). *Charu Chandra Ghose* v. *Chandi Charan Ray Chowdhury, 19 C. W. N. 25*, referred to. BHUBAN BEHARY NAG MAZUMDAR *v.* DHIRENDRA NATH BANERJI (1916) **20 C. W. N. 1203**

——— **O. XI, r. 2**—

See INTERROGATORIES. **I. L. R. 43 Calc. 300**

——— **O. XI, r. 21**—*Procedure—Plaintiff under suspicion of suppressing documents relating to the matter at issue—Dismissal of suit.* Where a plaintiff had given the Court strong grounds for believing that he was keeping out of the way documents which would throw light on the subject matter of the suit, but there had been no order made for discovery or inspection of documents, it was *held* that the Court was not justified in dis-

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **O. XI, r. 21**—*concld.*

missing the suit, purporting to act under Order XI, rule 21, of the Code of Civil Procedure. KISHAN LAL *v.* SULTAN SINGH (1915)

I. L. R. 38 All. 5

——— **O. XVI, rr. 10, 12**—*Fine for non-production of documents, conditions to be fulfilled before imposing fine—Duty of Courts and Settlement Officers to strictly follow the law relating to issue and service of summons.* O. XVI, r. 10, of the Civil Procedure Code does not apply where there has been no summons upon any body to produce the documents, and no order under r. 12 can be made until the procedure laid down in r. 10 has been followed where that rule applies. The Civil Courts, and particularly the peripatetic Settlement Courts, which cause a large amount of disturbance to local interests, cannot be too careful to follow the provisions of law strictly as regards summoning persons and documents before them. NABADIP CHANDRA NANDI *v.* THE SECRETARY OF STATE FOR INDIA (1916) . **20 C. W. N. 511**

——— **O. XXI, r. 2**—

See EXECUTION OF DECREE.

I. L. R. 43 Calc. 207

1. ——— *Civil Procedure Code (Act XIV of 1882), ss. 244, 258—Decree—Execution—Satisfaction of the decree—Payment or adjustment not certified to the Court—Subsequent fraudulent execution.* A decree was compromised by the parties out of Court. The payment, however, was not certified to the Court. The decree-holder having fraudulently applied for the execution of the decree. *Held,* that the Court should not in the exercise of its duty under s. 244 of the Civil Procedure Code, 1882, allow a clear case of fraud to be covered and condoned by the provisions of s. 258 of the Civil Procedure Code, 1882, or Order XXI, rule 2, Civil Procedure Code, 1908. *Trimbak Ramkrishna* v. *Hari Laxman, I. L. R. 34 Bom. 575,* followed. HANSA GODHAJI *v.* BHAWA JOGAJI (1915) . . . **I. L. R. 40 Bom. 333**

2. ——— *Execution of decree—Decree payable by instalments—Payment of instalments not certified—Limitation—Limitation Act (IX of 1908), Schedule I, Article 182(7).* The effect of Order XXI, rule 2, is that a payment made on account of a decree and not certified to the Court executing the decree cannot be recognized by that Court for any purpose. Where, therefore, payments had been made towards liquidation of an instalment decree but such payments were not certified to the Court executing the decree, it was *held,* that limitation ran against the decree-holder from the date upon which the first instalment was due. " Certified and recorded " within the meaning of Order XXI, rule 2, signify that the executing Court being satisfied by either the decree-holder or judgment-debtors that a certain payment has been made in respect of decree has recorded the fact on the execution file. *Gokul Chand* v. *Bhika, 12 All. L. J. 387,* and *Bhajan Lal* v. *Cheda Lal, 12 All. L. J. 825,* referred to. *Lakhi Narain Ganguli* v. *Fclamani Dasi, 20 C. L. J. 131,* dissented from. CHATTAR SINGH *v.* AMIR SINGH (1916)

I. L. R. 38 All. 204

3. ——— *Limitation Act (IX of 1908), ss. 19, 20—Payment extending limitation—Certification of payment by decree-holders—Statement of payment in application for execution of decree if sufficient.* A decree-holder in his application for execution of his decree notified to the Court that he had received a certain sum from the judgment-debtor and relied on this payment as saving limitation. It was found that the payment had in fact been made by the judgment-debtor himself by way of interest. *Held,* that the decree-holder may either apply to certify payment before execution or may do so in his application for execution of the decree. That there was sufficient certification by the decree-holder and under the circumstances it was not necessary for the Court to record the certification, and O. XXI, r. 2 did not stand in the way of the decree-holder. That in the face of the finding, the fact of the endorsement and the question as to who made it and the authority by which it was made were immaterial. KHATIBANNESSA BIBI *v.* SANCHIA LAL NAHATA (1915) **20 C. W. N. 272**

——— **O. XXI, r. 5**—*Agreement between one of the judgment-debtors and the decree-holder to enter up satisfaction of the decree—Agreement prior to decree—Application to enter up satisfaction, if maintainable—Civil Procedure Code (Act XIV of 1882), s. 244.* An application was made to the executing Court by one of the judgment-debtors to enter up satisfaction of the decree as against him, on the ground that there was an agreement to that effect entered into between himself and the decree-holder prior to the passing of the decree. The latter objected that such an application was not sustainable. *Held,* that the application was maintainable under Order XXI, rule 5 of the Civil Procedure Code (Act V of 1908). *Rukmani Ammal* v. *Krishnamachary,* 9 *Mad. L. T. 464,* referred to. *Lal das* v. *Kishondas, I. L. R., 22 Bom. 463,* followed. *Hassan Ali* v. *Ganzi Alim, I. L. R. 31 Calc. 179,* dissented from. SUBRAMANIA PILLAI *v.* KUMARAVELU AMBALAM (1915). **I. L. R. 39 Mad. 541**

——— **O. XXI, r. 16**—*Execution of decree—Res judicata.* On application by a person to have his name substituted as decree-holder upon the ground that he was in fact the true owner of the decree, an order was passed, after notice to the judgment-debtor, permitting the applicant to execute the decree as its transferee : *Held,* on application for execution of the decree, that the judgment-debtor was not entitled again to raise the question of the validity of the transfer of the decree to the applicant. *Oman Prasad* v. *Durlab Shankar, 12 All. L. J. 206,* followed. TAJ SINGH *v.* JAGAN LAL (1916) . . . **I. L. R. 38 All. 289**

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **O. XXI, r. 18**—*Cross-decrees—Set-off—Decree for sale on mortgage against purchaser of portion of the mortgaged property—Personal decree for money—Parties not filling the same character.* A person against whom a decree foreclosing his right to redeem a property from sale is passed in his character as a puisne mortgagee or an attaching creditor is a judgment-debtor to that decree in a character different from the one in which he holds a decree made in his favour personally and which is enforceable against his judgment-debtor by the arrest of his person and the attachment of his property. In the one case he has obtained his decree for costs in his individual and personal capacity. In the other he is not ordered to pay any sum of money in his individual and personal capacity, but is only given an option to do so if he likes to save from sale some property in which he is interested. In such circumstances, therefore, rule 18 of Order XXI of the Code of Civil Procedure will not be applicable. *Nagar Mal* v. *Ram Chand, I. L. R. 31 All. 240*, distinguished. SHEO SHANKAR *v.* CHUNNI LAL (1916) **I. L. R. 38 All. 669**

——— **O. XXI, r. 19**—*Execution of decree—Cross claims under the same decree—Set-off allowed even if one of the claims could not be recovered owing to bar of limitation.* The applicant applied to execute a decree for recovering the amount Rs. 445-8-0 which he was entitled to recover from the opponents as mesne profits. Under the same decree, the opponents were entitled to claim the sum of Rs. 855 as costs from the applicant ; but they were prevented from recovering it as it was barred by limitation. They, however, claimed to set off the amount against the amount sought to be recovered by the applicant. The Subordinate Judge having allowed the set-off, the applicant appealed : *Held*, dismissing the appeal, that the applicant could not be allowed to execute his decree for the smaller sum, without reference to the larger sum which the decree awarded to the opponents. MADAPPA GANAPPA *v.* JAKI GHOSAL (1915) . . . **I. L. R. 40 Bom. 60**

——— **O. XXI, r. 31**—

See SPECIFIC MOVEABLE PROPERTY.
I. L. R. 39 Mad. 1

——— **O. XXI, r. 41**—

See PRACTICE **I. L. R. 43 Calc. 285**

——— **O. XXI, r. 46**—

See DEPOSIT IN COURT.
I. L. R. 43 Calc. 269

——— **O. XXI, rr. 46, 54**—

——— *Attachment of usufructuary mortgagee's right under Order XXI, rule 54 and not under rule 46, illegal—Sale, consequent, invalid.* Attachment of the interest of a usufructuary mortgagee in a certain property should be in the manner provided by Order XXI, rule 46, Civil Procedure Code, for the attachment of a debt and not in the

CIVIL PROCEDURE CODE (ACT V OF 1908)— *contd.*

——— **O. XXI, rr. 46, 54**—*concld.*

form provided for the attachment of immovable property. Where, therefore, there was an attachment of the usufructuary mortgagee's right in the manner prescribed for attachment of immovable properties and the mortgagor who did not receive from Court any order prohibiting him from making payment of the usufructuary mortgage debt, discharged the same by payment and obtained from the mortgagee a release of his rights some time prior to the actual sale thereof in Court auction. *Held*, that the sale of the mortgagee's right in Court auction was invalid and that the purchaser acquired nothing by the purchase as against the mortgagor who had redeemed the mortgage by payment. The fact that on the date of the payment the mortgagee could not have got a personal decree against the mortgagor for the payment of the mortgage debt on account of limitation, is immaterial as limitation does not put an end to the debt and does not prevent the mortgagor and mortgagee from paying and receiving the mortgage amount. RAMASAMI MOOPHAN *v.* SRINIVASA IYENGAR (1915). . . **I. L. R. 39 Mad. 389**

——— **O. XXI, r. 52**—*Scope of—Attachment of money in the custody of Court.* One *S* mortgaged to the respondents his beneficial interest in his trade or business of a contractor. Subsequently he executed a similar mortgage in favour of the appellant. The respondents recovered judgment on their mortgage against the representatives of the estate of *S* and an order was made by the Court directing the registration and attachment of the money due to the estate of *S* from the Executive Engineer, Lower Ganges Bridge, and a letter was written by the Court to the Examiner of Accounts, Lower Ganges Bridge, stating that the money due to the heirs of *S* were attached by the Court at the instance of the respondents and requesting the Examiner to hold the moneys under attachment until further order of the Court. Thereafter the appellant obtained a decree against the heirs of *S* on his mortgage and an order was made by the Court for the registration and attachment of the bills payable to *S* in the office of the said Executive Engineer and the Court requested this officer to send two specified sums to the Court for payment to the appellant. After the money was sent to the Court, the respondents filed a petition to the effect that the appellant was trying to take out the money but that it might be kept under attachment by an order of the Court. On this petition, the Court ordered that the appellant was not to receive payment of the money unless and until the respondent's application was disposed of. At the hearing of the execution cases, the respondents contended that the question of title and priority in respect of the money in Court should be decided under O. XXI, r. 52 : *Held*, that the order of the Court withholding payment of the money to the appellant virtually amounted to an attachment of the money after it came into the custody of the Court. That O. XXI, r. 52, was clearly applicable to a case

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **O. XXI, r. 52**—*concld.*

like the present and there was no reason to narrow the words of the rule so as to make it applicable only to a case in which the property sought to be attached was in the custody of a Court other than the Court executing the decree. That as regards the question of priorities neither party perfected their charge by giving notice to the persons who were to make the payments to their mortgagor and accordingly apart from any question of notice the respondents' charge, which was prior in date, must prevail. SURAJMALL AGARWALLAH *v.* RAM CHANDRA MAINTRI (1915) . . **20 C. W. N. 412**

——— **O. XXI, rr. 58, 63**—

See COMPANIES ACT (VI OF 1882) s. 169. **I. L. R. 38 All. 537**

——— **O. XXI, r. 63**—

See LIMITATION ACT (IX OF 1908) SCH. I, ARTS. 11, 13. **I. L. R. 39 Mad. 1196**

——— *Execution of decree—Suit for declaration that property is not liable to attachment and sale—Valuation of suit. Held*, that in a suit for a declaration that property is not liable to attachment and sale in execution of a decree, where the value of the property is in excess of the amount claimed in execution of the decree, the proper valuation of the suit for the purpose of jurisdiction is, not the value of the property, but the amount for which the decree may be executed. *Dwarka Das* v. *Kameshar Prasad, I. L. R. 17 All. 69*, and *Dhan Devi* v. *Zamurrad Begam, I. L. R. 27 All. 440*, followed. *Phul Kumari* v. *Ghanshyam Misra, I. L. R. 35 Calc. 202*, referred to. KHETRA *v.* MUMTAZ BEGAM (1915) **I. L. R. 38 All. 72**

——— **O. XXI, r. 66**—*Execution of decree—Ancestral property—General rules of practice for Civil Courts, Chapter IV, rule 5.* Property to which title is made out by gift is not property *inherited* within the meaning of rule 4, Chapter IV, of the General Rules of Practice for the Civil Courts and such property is consequently not *ancestral*. FAZAL AHMAD *v.* WESAL-UD-DIN (1916) **I. L. R. 38 All. 481**

——— **O. XXI, r. 89**—

1. ——— *Sale in execution of decree—Judgment-debtor privately selling the property so sold—Application by judgment-debtor to set aside Court sale.* A judgment-debtor whose property has been sold at a Court sale in execution of the decree against him, has a right to apply to have the sale set aside as a person owning the property sold in execution of the decree within the meaning of rule 89 of Order XXI of the Civil Procedure Code of 1908, in spite of the fact that he has transferred his interest in the property after the Court sale. PANDURANG LAXMAN *v.* GOVIND DADA (1916) . . . **I. L. R. 40 Bom. 557**

2. ——— *No n-transferable occupancy-holding—Purchase at mortgage sale—Subsequent rent sale and purchase by landlord—Right of first purchaser to set aside sale by deposit—Bengal Tenancy Act (VIII of 1885 as amended by E. B. and A. C. Act (1 of 1907), s. 170, (3).* Where (in a case governed by Act I of 1907 E. B. and A. C.) the landlord himself purchases a non-transferable occupancy-holding at a sale held in execution of a decree for rent obtained against the registered tenant of the holding, a person who had within 12 years purchased the whole holding at a sale in execution of a mortgage-decree, is not entitled to set aside the sale by making a deposit under O. XXI, r. 89 of the Civil Procedure Code. *Tarak Das Pal* v. *Harish Chandra Banerjee, 17 C. W. N. 163 : s. c. 16 C. L. J. 548, Dayamayi Dasi* v. *Ananda Mohan Roy, 18 C. W. N. 971*, and *Ahmadulla Chowdhry* v. *Prayag Sahu, 20 C. W. N. 39*, referred to. ABDUR RAHAMAN SARKAR *v.* PROMODE BEHARY DUTT (1915) . . . . **20 C. W. N. 40**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. XXI, r. 89**—*concld.*

——— **O. XXI, r. 89** (*b*)—*Payment into Court of portion of a judgment-debt by persons other than the applicant, no right to take credit for—'Receipt,' meaning of.* Order XXI, rule 89, Civil Procedure Code, is in the nature of an indulgence to judgment-debtors; and a judgment-debtor who wishes to take advantage of its provisions must strictly comply with the same, by paying all the amounts as directed by the rule, less any amount that may have been paid by *himself*, and he cannot take credit for any amount paid by a co-judgment-debtor who has not joined him in the application; and according to the rule, credit can be taken only for any amount that may have been actually or constructively *received* by the decree-holder and not for one which, having been deposited, could have been received by him, had he been minded to do so. *Trimback* v. *Ramchandra, I. L. R. 23 Bom. 723*, and *Kripa Nath Pal* v. *Ram Lakshmi Dasya, 1 C. W. N. 703*, followed. *Anantha Lakshmi Ammal* v. *Sankaran Nair, 24 Mad. L. J. 205*, and *Vedala Lakshminarasimha Charyulu* v. *Pacha Lakshmiamma, (1912) Mad. W. N. 756*, distinguished. KARUNAKARA *v.* KRISHNA (1915) **I. L. R. 39 Mad. 429**

——— **O. XXI, r. 90**—*Sale in execution of a decree—Application to set aside a sale by person claiming to be the real owner.* Where immovable property has been sold in execution of a decree against the ostensible owner, a person claiming to be the real owner is not competent to ask the Court to set aside the sale under Order XXI, rule 90, of the Code of Civil Procedure. *Abdul Aziz* v. *Tafajuddin, 23 Indian Cases 839*, referred to. HARDWARI LAL *v.* SALAMAT-ULLAH KHAN **I. L. R. 38 All. 358**

——— **O. XXI, r. 93**—

See EXECUTION SALE. **I. L. R. 39 Mad. 803**

——— **O. XXI, r. 95**—*Execution sale—Purchase by decree-holder—Delivery of possession—Order, whether appealable—S. 47, C. P. C., whether*

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. XXI, r. 95**—*concld.*

applicable. Where on a decree-holder auction-purchaser applying for delivery of possession of the properties purchased and obtaining possession by order of Court notwithstanding the objection by the judgment-debtor that the properties did not pass by the sale, the judgment-debtor preferred an appeal : *Held,* on a review of the authorities of all the Indian High Courts (which are conflicting), that the Patna High Court should not without very good reason depart from a long course of decisions in the Calcutta High Court where the balance of opinion has been since 1883 strongly in favour of the view that an appeal does not lie. ABDUL GANI *v.* RAJA RAM (1916) **20 C. W. N. 829**

——— **O. XXIII, r. 1** (*2*)—*Application to withdraw from suit with liberty to sue again—Court, if may grant application but without liberty.* Where the trial Court, being of opinion that no sufficient ground had been made out for allowing the plaintiff to withdraw from the suit with liberty to institute a fresh suit in the same cause of action, passed order allowing him to withdraw without such leave : *Held,* that the suit was not disposed of by the order. Where a plaintiff does not desire to withdraw from the suit unless with liberty to bring a fresh suit, and the Court considers that such liberty ought not to be granted, the proper course is simply to dismiss the application. *Mohant Biharidasji Guru Govinddasji* v. *Parshotamdas Ramdas, I. L. R. 32 Bom. 345,* followed. SURADHANI DEBYA *v.* CHANDRA NATH PRAMANIK (1915) **20 C. W. N. 1011**

——— **O. XXIII, r. 1** (*2*) (*b*)—*Suit dismissed by trial Court, on evidence allowed to be withdrawn with liberty to sue again by appeal Court, though no formal defect by reason of which suit might fail was made out—Fresh suit if barred—Res judicata.* Where a contested suit, in which evidence was called on both sides, having been dismissed by the trial Court, the plaintiff was allowed by the Appellate Court to withdraw from the suit with liberty to bring a fresh suit, though no formal defect by reason of which the suit would fail was made out and really because the plaintiff was unable to produce the necessary evidence in time : *Held,* that the order of the Appellate Court was made without jurisdiction and a subsequent suit in respect of the same property and in which the same relief was prayed for was barred by the rule of *res judicata.* The " sufficient grounds " for permitting withdrawal with liberty to bring a fresh suit on the same cause of action referred to in cl. (*b*) of r. 1, O. XXIII of the Civil Procedure Code must be something of the same nature as the " formal defect" mentioned in cl. (*a*). *Kharda Co., Ld.* v. *Durga Charan Chandra, 11 C. L. J. 45,* and *Mabulla Sardar v. Hemangini Debi, 11 C. L. J. 512,* followed. KALI PRASANNA SIL *v.* PUNCHANAN NANDI CHOWDHURY (1916). **20 C. W. N. 1000**

——— **O. XXIII, r. 1** (*3*)—*Suit by reversioners to declare an alienation invalid during widow's lifetime, withdrawal of—Subsequent suit after widow's death, for possession—Defence, the same as in the first suit—Subsequent suit not barred by Civil Procedure Code, O. XXIII, r. 1* (*3*). The next presumptive reversioners of a deceased Hindu instituted a suit against his widow and her alienee for a declaration that an alienation by her was invalid and not binding on them. Pending the suit, the widow died and the reversioners withdrew the suit but did not ask for permission to bring a fresh suit. They subsequently brought a suit against the alienee for the recovery of possession of properties from him and he set up the very same defences on the merits which he had set up in the first suit. *Held,* that the subsequent suit was not barred by the provision of Order XXIII, rule 1 (*3*), Civil Procedure Code (Act V of 1908). Where the cause of action and the relief claimed in the second suit are not the same as the cause of action and the relief claimed in the first suit, the second suit cannot be considered to have been brought in respect of the same subject-matter as the first suit and the plaintiff in the second suit is not debarred from contesting the allegations made by the defence in the first suit. *Gopal Chandra Banerjee* v. *Purna Chandra Banerjee, 4 C. W. N. 110,* followed. *Achuta Menon* v. *Achutan Nair, I. L. R. 21 Mad. 35, Machana Uajhala Dikshatulu* v. *Gorugantulu Yaggamma, (1910) Mad. W. N. 782,* and *Sennava Reddiar* v. *Venkatachala Reddiar, 2 M. L. W. 177,* overruled. SINGA REDDI *v.* SUBBA REDDI (1915) . . **I. L. R. 39 Mad. 987**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. XXIII, r. 1**—*concld.*

——— **O. XXIII, r. 3**—*Compromise—Petition of compromise filed in subsequent suit—Registration—Registration Act (XVI of 1908), s. 17.* In a suit for a declaration of title to certain immovable property, the plaintiff applied to the Court stating that the suit had been compromised and asking that a decree might be made under Order XXIII, rule 3 of the Code of Civil Procedure. In support of this application he filed a copy of a petition which had been presented shortly before by both parties to the Revenue Court in proceedings for mutation of names in respect of the same property as was in the dispute in the Civil Court, and which set forth that the matter before the Revenue Court had been compromised in the manner therein stated. The petition had been accepted and acted upon by the Revenue Court. *Held,* that the petition was evidence in the Civil Court that the matter in dispute between the parties had been adjusted out of Court, and that it did not require to be registered. SITAL PRASAD *v.* GOBIND PRASAD (1915) **I. L. R. 38 All. 75**

——— **O. XXVI, r. 9**—

See RIGHT OF SUIT.
I. L. R. 39 Mad. 501

——— **O. XXIX, rr. 1, 2**—

See PLAINT . **I. L. R. 43 Calc. 441**

CIVIL PROCEDURE CODE (ACT V OF 1938)—*contd.*

——— **O. XXXII, r. 7**—*Arbitration, reference to—Minors, parties—Guardian ad litem, submission by, without leave of Court—Award-decree, validity of—Appeal against, if competent—Compromise, decree on—Leave of Court, not obtained—Decree, if voidable—Suit to set aside decree, if competent—Partition suit—Setting aside of decree, effect of—Suit, if re-opened against whom.* A suit can be brought on behalf of minors to set aside a decree passed on compromise in another suit or appeal in which the minors were parties, on the ground that leave of Court under Order XXXII, rule 7 of the Civil Procedure Code was not obtained by their guardian *ad litem* to enter into the compromise on their behalf. Leave of Court under Order XXXII, rule 7, must be obtained by a guardian *ad litem* of minors for agreeing on their behalf to refer through Court the subject-matter of a suit to arbitration ; where no such leave was obtained, a decree passed on an award is not binding on the minors and a suit can be instituted on behalf of the minors to obtain a declaration that the decree does not bind them. The avoidance of a decree in a partition suit will have the effect of re-opening the whole suit in respect of all the parties thereto, and on an application being made to the Court, it will proceed with the trial of the suit. A suit will lie to set aside a decree passed on an award, when the objection raised is as to the validity of the award on the ground that no leave of Court was obtained for the submission to arbitration on behalf of minors who were parties to the suit, under Order XXXII, rule 7 of the Civil Procedure Code. *Ghulam Khan* v. *Muhammad Hassan, I. L. R. 29 Calc. 167*, explained. *Raja Har Narain Singh* v. *Chaudrain Bhagwant Kuar, I. L. R. 13 All. 300, Hardeo Sahai* v. *Gauri Shankar, I. L. R. 28 All. 35, Latawan* v. *Lachya, I. L.R. 36 All. 69, Lakshmana Chetti* v. *Chinathambi Chetti, I. L. R. 24 Mad. 326, Venkatachalla Reddi* v. *Rangiah Reddi, 21 Mad. L. J. 990, Ganesha Rao* v. *Tulajaram Row, I. L. R. 36 Mad. 295, Bhimaji Gobind* v. *Rakmabai, I. L. R. 10 Bom. 338, Tincowry Dey* v. *Fakir Chand Dey, I. L. R. 30 Calc. 218, Khajooroonissa* v. *Rowshan Johan, I. L. R. 2 Calc. 184*, and *Manohar Lal* v. *Jadunath Singh, I. L. R. 28 All. 585*, referred to. VIJAYA RAMAYYA *v.* VENKATASUBBA RAO (1915)

I. L. R. 39 Mad. 853

——— **O. XXXIII, rr. 10, 11**—*Stamp duty on a pauper's plaint—Decree for less than the amount claimed.* In a suit brought *in forma pauperis*, the plaintiff succeeded only in part and failed as to the rest of the claim ; the lower Court ordered the defendant to pay the entire costs incurred by the plaintiff including the amount of court-fees which would have been payable on the plaint. *Held*, that the court-fees payable on the plaint should be apportioned under the provisions of rules 10 and 11 of Order XXXIII of the Code of Civil Procedure. *Chandraka* v. *Secretary of State for India, I. L. R.* 14 Mad. 163, followed. GANGA DAHAL RAI *v.* MUSAMMAT GAURA (1916).

I. L. R. 38 All. 469

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. XXXIII, r. 15**—*Application to sue in forma pauperis, effect of rejection under r. 5—Distinction, if any, between orders under r. 5 and r. 6.* On the rejection of an application for leave to sue as pauper, the only course open to the applicant is to institute a suit in the ordinary way. There is no distinction between rejection under r. 5 and an order of refusal under r. 7. ATUL CHANDRA SEN *v.* RAJA PEARY MOHAN MOOKERJEE (1915)

20 C. W. N. 669

——— **O. XXXIV, rr. 3, 8**—*Extension of time for paying mortgage amount only upon good cause—Non-passing of a foreclosure decree, not a good cause for extension—Civil Procedure Code (Act V of 1908), s. 115—No interference, even with an order passed without jurisdiction, if justice does not require.* Extension of time for payment of the mortgage amount due under a decree in suits instituted either by the mortgagor or the mortgagee, can be given only where good cause is shown therefor and a party is not entitled to it as a matter of right, under Order XXXIV, rules 3 and 8, of the Code of Civil Procedure. An extension of time cannot be granted on the sole ground that no order for foreclosure absolute has been passed. The High Court is not bound to interfere in revision with an order for extension of time wrongly passed. English practice referred to. MURUGESA MUDALY *v.* RAMASAMI CHETTY (1915)

I. L. R. 39 Mad. 882

——— **O. XXXIV, rr. 4, 5**—*Mortgage—Preliminary decree in favour of puisne mortgagee—allowing redemption of prior mortgage—Rights of puisne mortgagee on redemption to a decree absolute for sale of the property comprised in both mortgages.* In a suit for sale by puisne mortgagees, the preliminary decree gave the plaintiffs a right to redeem a prior mortgage covering other property as well as that included in the mortgage in suit. The preliminary decree did not, however, specify this property as property which the mortgagees plaintiffs were entitled, in the event of non-payment, to bring to sale. *Held*, that the plaintiffs mortgagees, having paid the amount due on the prior mortgage, were entitled, notwithstanding this omission, to a final decree for sale of the property comprised in both mortgages. UDHISHTER SINGH *v.* KAUSILLA (1916)

I. L. R. 38 All. 398

——— **O. XXXIV, r. 5**—*Application for decree absolute for sale on a mortgage—Limitation—Terminus a quo—Limitation Act (IX of 1908), Schedule I, Article 181.* An application under Order XXXIV, rule 5 (2) of the Code of Civil Procedure (1908), is an application in the suit and not an application in execution, and is governed, as regards limitation, by Article 181 of the first schedule to the Indian Limitation Act, 1908. *Datto Atmaram Hasabnis* v. *Shankar Dattatraya, I. L. R. 38 Bom. 32, Amlook Chand Parrack* v. *Sarat Chander Mukerjee, I. L. R. 38 Calc. 913, Ali Ahmad* v. *Naziran Bibi. I. L. R. 24 All. 542*, and *Udit Narain*

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **O. XXXIV, r 5**—*concld.*

v. *Jagan Nath, 1. All. L. J., 15,* referred to. The right to make such an application accrues on the date when the time limited by the preliminary decree expires, unless such time has been extended by a Court of Appeal. The principle of the decision in *Gaya Din* v. *Jhumman Lal, I. L. R. 37 All. 400,* applied. MADHO RAM *v.* NIHAL SINGH (1915) . . . . **I. L. R. 38 All. 21**

——— **O. XXXIV, r. 5** (*2*)—

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S. 15B.
I. L. R. 40 Bom. 492

——— **O. XXXIV, r. 8**—PROVISO—*Preliminary mortgage-decree by Appellate Court—Power to extend time for payment, only for first Court—Order of extension by Appellate Court—Appeal against, non-maintainability of—Civil Procedure Code (Act V of 1908), s. 148, no power to extend time under.* No appeal lies from an order extending time for payment of the mortgage-amount due under a decree; such an order is not a decree within s. 2, clause (*2*) of the Code of Civil Procedure. Even in cases where the preliminary mortgage-decree is passed by the Appellate Court, it is only the Court of first instance that can extend time for payment under Order XXXIV, rule 8, proviso, of the Civil Procedure Code (Act V of 1908). *Venkatakrishna Ayyar* v. *Thiagaraya Chetti, I. L. R. 23 Mad. 521, Sheonarain* v. *Chunni Lal, I. L. R. 23 All. 88,* and *Ramdhani Sahu* v. *Lalit Singh, I. L. R. 31 All. 328,* followed. S. 148 of the Civil Procedure Code (Act V of 1908) does not enable a Court to extend time for doing acts allowed by a decree. *Het Singh* v. *Tika Ram, 9 All. L. J. 381* and *Suranjan Singh* v. *Rama Bahal Lal, 17 Ind. C. 912,* followed. DHARMARAJA AYYAR *v.* SRINIVASA MUDALIAR (1915)
I. L. R. 39 Mad. 876

——— **O. XXXVIII, r. 5**—*Application for attachment before judgment—Summons to defendant to furnish security—Money paid into Court—Subsequent insolvency of defendant—Plaintiff's right over the deposit—No charge for the decree amount—Right of the Official Assignee.* When, on an application made by the plaintiff under Order XXXVIII, rule 5 of the Code of Civil Procedure for attachment before judgment of certain properties belonging to the defendant, the Court issued summons to the defendant to furnish security for a certain amount or to show cause against it and further ordered that certain goods belonging to the defendant should be attached until further notice, and the defendant paid into Court the amount specified in the summons but subsequently became an insolvent: *Held,* that the plaintiff had no charge on the money paid into Court as against the Official Assignee of the insolvent. ERRIKULAPPA CHETTY *v.* THE OFFICIAL ASSIGNEE, MADRAS (1915)
I. L. R. 39 Mad. 903

——— **O. XL, r. 1**—

See RECEIVER **I. L. R. 43 Calc. 124**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. XL, r 4.**—*Receiver, misappropriation of income by—Property, meaning of—Wilful default, meaning of—Death of receiver—Application against legal representatives, if maintainable.* Under Order XL, r. 4 of the Code of Civil Procedure (Act V of 1908), an application can be made for execution being levied against the properties of a receiver in the hands of his legal representatives, in respect of his misappropriation of the *income* of the properties entrusted to his charge. RAMAN NAIR *v.* GOPALA MENON (1915)
I. L. R. 39 Mad. 584

——— **O. XLI, r. 11; XLVII, r. 4**—

See APPEAL . **I. L. R. 43 Calc. 178**

——— **O. XLI, rr. 22** (*3*), **33**—

See SALE . **I. L. R. 43 Calc. 790**

——— **O. XLI, r. 23**—

See AGRA TENANCY ACT (II OF 1901), SS. 182, 183. **I. L. R. 38 All. 181**

——— **O. XLI, r. 27**—*Additional evidence called for by Appellate Court—Re-summoning of witness already examined before the Court of first instance. Held,* that Order XLI, rule 27, of the Code of Civil Procedure, 1908, is not intended to enable an Appellate Court to recall and re-examine before it a witness who has already been examined and cross-examined before the Court of first instance. MUHAMMAD SIDDIQ *v.* MAHMUD-UN-NISSA BIBI (1916) . . **I. L. R. 38 All. 191**

——— **O. XLI, r. 33**—

1. ——— *Appellate Court, power of, to allow withdrawal of suit with liberty to bring fresh suit when part only of decree is appealed against.* The plaintiff's suit for recovery of possession of land on declaration of title was decreed in part and the defendants appealed against the decree in so far as it was against them. The plaintiff did not prefer any cross-appeal or cross-objection. *Held,* that under r. 33 of O. XLI, it was competent to the High Court in appeal to allow the plaintiff to withdraw from the entire suit with liberty to bring a fresh suit upon the same cause of action; but this power must be cautiously exercised and should not be permitted to be invoked in favour of a litigant so as to enable him to evade the provisions of other statutes, *e.g,* the Limitation Act and the Court-Fees Act. In the circumstances of the case the High Court allowed the plaintiff on terms as to costs to withdraw from the suit with liberty to bring, subject to the law of limitation, a fresh suit in respect of the same cause of action only with regard to the lands which had been decreed in his favour by the lower Court. AKIMUNNESSA BIBI *v.* BEPIN BEHARY MITTER (1915)
20 C. W. N. 544

2. ——— *Scope and effect of as to powers of Appellate Courts—Dismissing entire suit on plaintiff's appeal when part of claim admitted by defendant who prefers no appeal.* In a suit for

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

———— **O. XLI, r. 33**—*concld.*

arrears of rent, the plaintiff claimed rent at a particular rate. The defendants admitted a lower rate and the Court of first instance decreed the suit at this admitted rate. The plaintiff having appealed, the District Judge dismissed the entire suit although the defendants did not prefer an appeal nor file any cross-objection. *Held*, that r. 33 of O. XLI is very widely expressed but it should not be applied so as to enable a party litigant to ignore the other provisions of the Code or the provisions of statutes like those which relate to limitation or payment of court-fees. That ordinarily r. 33 should be limited to those cases where as a result of the Appellate Court's interference with the decree in favour of the appellant further interference is required in order to adjust the rights of the parties in accordance with justice, equity and good conscience. That in the present case the lower Appellate Court allowed the defendants in substance to evade the provisions of the Civil Procedure Code, the Limitation Act and the Court-Fees Act ; and even assuming that r. 33 is applicable to a case of this description, that judicial discretion vested in the Court of Appeal below was not properly exercised. ABJAL MAJHI *v.* INTOO BEPARI (1915) . . . **20 C. W. N. 542**

———— **O. XLIII, r. 1, cl.** (*1*)—*Suit by Hindu widow—Adoption pending suit—Widow allowed to prosecute suit, though divested, on strength of ante-adoption agreement—Order, if appealable.* Where during the pendency of a suit brought by a Hindu widow, the defendant objected that by an adoption made since the institution of the suit, the plaintiff had divested herself of the estate of her husband and so could no longer prosecute the suit, but the Court overruled the objection in the view that plaintiff was entitled to prosecute the suit under an *ante*-adoption agreement with the natural father of the adopted son : *Held*, that the order was not one under r. 10 of O. XXII of the Civil Procedure Code and was not appealable under O. XLIII, r. 1, cl. (*1*). PROMOTHA NATH ROY CHOWDHURY *v.* DINAMONI CHOWDHARANI (1916). . . . . **20 C. W. N. 552**

———— **O. XLIII, R. 1** (*r*) **and O. XXXIX. r. 2, cl.** (*3*)—*Interlocutory injunction, disobedience of—Order declining to arrest or attach property—Appealability—Petition to commit while suit pending—Order thereon after dismissal of suit, legality of—Imprisonment, order of, without first ordering attachment, illegal.* An appeal lies under O. XLIII, rule 1, clause (*r*) of the Civil Procedure Code (Act V of 1908) from an order declining to order arrest or attachment of property for disobedience of an interlocutory injunction and the Appellate Court can on appeal pass the order which the Lower Court should have passed. Where the injunction was disobeyed and the application to commit was put in while the suit was pending, the fact that the order on the application was made after the suit was dismissed does not affect the powers of the

CIVIL PROCEDURE CODE (ACT V OF 1908)— *contd.*

———— **O. XLIII**—*concld.*

Court, to take action for the breach. The Court can in its discretion order either arrest or attachment of property and is not bound in the first instance to attach and then only order imprisonment. SUPPI *v.* KUNHI KOYA (1916).
I. L. R. 39 Mad. 907

———— **O. XLV, r. 5**—

See VALUATION OF SUIT.
I. L. R. 43 Calc. 225

———— **O. XLVII, r. 2**—*Judge who did not decide case but signed the decree if may entertain review application under r. 2—" Judge who passed decree," meaning of—Review granted without notice by Judge who decided case if authorises Judge who signed decree to entertain review application.* An application under O. XLVII, r. 2, of the Civil Procedure Code, for a review of a decree upon some grounds other than the discovery of new and important matter or evidence or the existence of a clerical or arithmetical mistake cannot be made to a Judge who signed the decree but did not write or deliver the judgment in accordance with which the decree was drawn up. The expression " the Judge who passed the decree " in r. 2. O. XLVII, C. P. C., means the Judge who decided the case and not the Judge who merely signed a decree after satisfying himself that it has been drawn up in accordance with the judgment delivered by his predecessor, and the fact that the former had granted an application for review which was set aside on the ground of the order having been passed without notice to the other side did not authorise the latter to entertain the application. TAMIJUDDI SHEIKH *v.* SATYA SANKAR GHOSHAL (1915)
20 C. W. N. 391

———— **O. XLVII, r. 7**—*Reference by District Judge of case tried by Small Cause Court—S. 115, C. P. C.—s. 25, Small Couse Courts Act (IX of 1887)—Interference by High Court on question of fact.* The plaintiff brought his suit in the Court of Small Causes for recovery of damages against the defendant who was said to have held some land under a contract to take half the proceeds as remuneration for his labour and expense. The Small Cause Court found that the defendant was a servant remunerated by the receipt of half the produce and decreed the suit. On a reference by the District Judge recommending the setting aside of the decree of the Small Cause Court Judge on the ground that the defendant should have been held to be a tenant against whom the suit could not be entertained : *Held*, that the Court of Small Causes was a Court subordinate to the District Judge and O. XLVII, r. 7 contemplated a reference by the District Judge of cases tried by such Court. That in cases of revision under s. 115, C. P. C., or under s. 25 of the Small Cause Courts Act, the High Court does not generally interfere with findings of fact arrived at by the first Court if those proceedings are supported by evidence before the Court. No case having

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **O. XLVII, r. 7**—*concld.*

been made out for interference on a question of fact, the reference was discharged. RATAN BEPARI *v.* HIRA LAL SARKAR (1916) **20 C. W. N. 1110**

——— **O. XLVII, r. 8**—*Decree of Division Bench of High Court of two Judges found erroneous giving plaintiff more than he claimed—Application for amendment before one of them—Jurisdiction of single Judge to amend decree—Court in granting application for review, if bound to re-hear whole case —Re-hearing of case by single Judge without authority from Chief Justice—Jurisdiction.* An application for amendment of a decree made in favour of the plaintiff by a Division Bench of the High Court of two Judges was moved by some of the defendants before one of them (the other Judge having left the Court) and a Rule was issued on the plaintiff to show cause why the decree should not be set aside or amended, or why such other order should not be made as might seem fit, on the ground that the decree purported to give plaintiff a relief not claimed by him. The Judge made the Rule absolute, and then in terms of r. 8, O. XLVII, C. P. C. proceeded to rehear the case with the result that the judgment and decree of the Division Bench were amended. The plaintiff appealed against this last decision. *Held*, (*Per* JENKINS C. J. and N. R. CHATTERJEA J.) that in the absence of an order by the Chief Justice authorising the learned Judge alone to sit for the hearing of the case, his decision was without jurisdiction. The case thereafter was heard before the Regular Bench, the Judges whereof refused to rehear the whole case, and confining themselves to the point of amendment only passed a decree amending the judgment and decree. Some of the defendants having applied for review of this last decree, on the ground that the learned Judges should have reheard the whole appeal, *held*, that the decree of the Division Bench stood amended, as soon as the Rule to amend it was made absolute, and all subsequent proceedings were superfluous. That as the last decree of the High Court only affirmed that order, it was not necessary to set it aside. *Per* MOOKERJEE J. R. 8 of O. XLVII of the Civil Procedure Code clearly leaves it optional with the Court to determine whether, when a review is granted, the case should be reopened in part or in its entirety. GOUR SUNDAR BHOWMIK *v.* RAKHAL RAJ BHOWMIK (1916) . . **20 C. W. N. 1165**

——— **O. XLVIII, r. 9**—*Review of judgment—Second application for review—Practice. Semble*: that there is nothing in the Code of Civil Procedure which prevents a second application for review being made after a previous application for review has been made and rejected. *Gobinda Ram Mondal* v. *Bhola Nath Bhatta, I. L. R. 15 Calc. 432*, referred to. PALLIA *v.* MATHURA PRASAD (1916) **I. L. R. 38 All. 280**

——— **Sch. II, cls. 17, 20**—*Award—Application to file an award on reference made out of Court—Proceedings in Court continued—Limitation Act (IX of 1908), ss. 5 and 14 ; Sch. I, Art. 178.* Pending proceedings for mutation of names, the parties concerned referred to arbitration out of Court the whole question of their title to the property in dispute, and the arbitrator delivered his award. The mutation proceedings were nevertheless continued. More than six months after the date of the award, some of the parties filed an application in the Civil Court purporting to be under cl. 17 of the second Schedule to the Code of Civil Procedure, and subsequently an amended application under cl. 20. *Held*, that the application was time-barred. Cl. 17 of the second Schedule to the Code of Civil Procedure was totally inapplicable, and neither s. 5 nor s. 14 of the Indian Limitation Act, 1908, could be applied in favour of the amended application under cl. 20. RAM UGRAH PANDE *v.* ACHRAJ NATH PANDE (1915) **I. L. R. 38, All. 85**

——— **Sch. II, para. 21 ; O. XLIII, r. 1**—*Arbitration—Application to file an award made out of Court—Application granted ex parte—Refusal to set aside ex parte order—Appeal. Held*, that an appeal will lie against an order rejecting an application to set aside an *ex parte* decree passed under para. 21 of the second Schedule to the Civil Procedure Code, 1908. NIHAL SINGH *v.* KHUSHHAL SINGH (1916) . . **I. L. R. 38 All. 297**

CIVIL RULES OF PRACTICE.

——— **r. 161** (*a*)—

Fixing of six months for applying for execution in Court to which decree is sent for execution—Object of the rule—Execution application after six months and partial execution thereon, validity of —Time not the essence of the rule—Civil Procedure Code (Act V of 1908), s. 24, c. (1) (b)—Right of District Court to recall a case sent to a Subordinate Court for execution. R. 161 (*a*) of the Civil Rules of Practice which enacts that "if after a decree has been sent to another Court for execution, the decree-holder does not, within six months from the date of the transfer, apply for the execution thereof, the Court to which the decree has been sent shall certify the fact that no application for execution has been made to the Court which passed the decree and shall return the decree to that Court " is in the nature of instruction or direction to the Court to return the papers to the transmitting Court if no steps are taken by the decree-holder within six months to execute the decree. A violation of this rule does nor render the proceeding taken, as in this case after six months after transmission, void *ab intitio*. The rule is only directory and not mandatory and the time mentioned is not of the essence of the rule. *Caldow* v. *Pixell, 2 C. P. D. 562*, followed. Where a decree is sent to a District Court for execution by another Court and the District Court transfers the decree for execution to a Subordinate Court, the

CIVIL RULES OF PRACTICE—*concld.*

——— r. 161—*concld.*

period of six months allowed by the rule for execution in favour of the decree-holder is to be counted from the time the decree is sent to the District Court and not to the Subordinate Court. Under section 24 (*l*) (*b*), Civil Procedure Code, the District Court is entitled to withdraw to its own file the execution proceedings transmitted by it to the Subordinate Court and to dispose of it. VELLIAPPA *v.* SUBRAHMANYAM (1915) **I. L. R. 39 Mad. 485**

CLAIM PETITIONS.

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882), S. 19, CL. (*s*). **I. L. R. 39 Mad. 219**

CLAIM PROCEEDINGS.

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882), S. 19, CL. (*s*). **I. L. R. 39 Mad.[19**

CO-DEFENDANTS.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 11. **I. L. R. 40 Bom. 210**

CO-EXECUTORS.

——— **compromise between—**

See HINDU LAW—WILL. **I. L. R. 39 Mad. 365**

CO-HEIRS.

See TENANTS-IN-COMMON **I. L. R. 39 Mad. 1049**

CO-OWNERS.

See ADVERSE POSSESSION. **I. L. R. 39 Mad. 379**

See CONTRACT ACT (IX OF 1872), SS. 69 and 70 . **I. L. R. 39 Mad. 795**

See HINDU LAW—PARTITION. **I. L. R. 43 Calc. 1118**

See JOINT PROPERTY. **I. L. R. 39 Mad. 54**

See RIGHT OF SUIT. **I. L. R. 39 Mad. 501**

CO-SHARER.

See PRE-EMPTION **I. L. R. 33 All. 260**

——— *Suit to recover joint possession, when lies—Ouster by other co-sharer, what amounts to—Claim and exercise of exclusive title under a lease from a stranger—When co-sharer in possession may keep exclusive possession—Change of case in secoond appeal—Remand, prayer for.* The 5/6ths owners of an estate A sued the remaining 1-6th owners for recovery of joint possession with the latter of certain lands within the estate. The latter in defence stated the lands in suit were part of estate B, which the owners of that estate had given them in lease. This having been found against in the Court of first appeal, the defendants in second appeal prayed to be allowed to set up the defence that they had been in occupation of the lands as co-sharers

CO-SHARER—*concld.*

and were cultivating the same as such with the consent of the plaintiffs. The prayer was disallowed, and *held*, that this was a case of exclusion of co-sharers by other co-sharers and the plaintiffs were entitled to a decree for joint possession. *Watson & Co.* v. *Ram Chand Dutt, L. R. 17 I. A. 110 : s. c. I. L. R. 18 Calc. 10, Lachmeswar Singh* v. *Manowar Hossein, L. R. 19 I. A. 48 : s. c. I. L. R. 19 Calc. 253,* and *Mokesh Narain* v. *Nawbut Pathak, I. L. R. 32 Calc. 837 : s. c. 1 C. L. J. 437,* distinguished. MOOKERJEE J. The rule laid down in *Watson & Co.* v. *Ram Chand Dutt, L. R. 17 I. A. 110 : s. c. I. L. R. 18 Calc. 10,* is a rule of justice, equity and good conscience and must be applied with reference to the circumstances of the individual case before the Court. *Prima facie* co-owners are entitled to hold joint possession of joint property, and consequently, if one co-sharer seeks to defeat the claim of another co-sharer to joint possession, special circumstances must be alleged and established to justify exclusive occupation by one of them. The principle deducible from the cases is that a co-sharer who has been ousted from joint property is entitled to recover joint possession. To constitute ouster a physical eviction is not essential ; if a co-owner is in possession on behalf of or under an adverse claimant under such circumstances as to evidence a claim of exclusive right and title and a denial of the rights of the other co-sharers, there is an ouster in law. When one co-owner accepts a deed of the whole property from one who has no title and claims and exercises the rights of sole ownership under a denial of any other person's right in the premises, he is in adverse possession to the exclusion of his co-sharers. NARENDRA BHUSAN ROY *v.* JOGENDRA NATH ROY (1916) . . **20 C. W. N. 1258**

CO-WIVES, SONS OF.

See HINDU LAW—STRIDHAN. **I. L. R. 43 Calc. 944**

COLLECTOR.

——— **partition effected by—**

See DECREE . **I. L. R. 40 Bom. 118**

COLLISION CASE.

See ADMIRALTY JURISDICTION. **20 C. W. N. 1022**

COMMITMENT.

——— **while suit pending—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLIII, R. I (*r*) AND O. XXXIX, R. 2, CL. (*3*) **I. L. R. 39 Mad. 907**

COMMON CARRIERS.

See CONTRACT ACT (IX OF 1872), SS. 56, 65 . . **I. L. R. 40 Bom. 529**

COMMON MANAGER.

——— *Application for the appointment of a Common Manager—Appointment of a receiver pending disposal of the application—Bengal Tenancy Act (VIII of 1885), s. 93—Civil Procedure*

COMMON MANAGER—*concld.*

Code (Act V of 1908) s. 141 and O. XL, r. 1. The terms of O. XL. r. 1 of the Civil Procedure Code of 1908 are wider than the corresponding s. 502 of the Civil Procedure Code of 1882 and do not provide that the appointment of a receiver should be confined to a suit. An application for the appointment of a Commom Manager under s. 93 of the Bengal Tenancy Act is an original proceeding contemplated in s. 141 of the Civil Procedure Code to which the procedure under O. XL, r. 1, seems to be applicable. *Thakur Prasad v. Fakirulla, I. L. R. 17 All. 106*, followed. The relief of an aggrieved party to such an order is by way of an appeal and not by an aplication for revision. ASADALI CHOWDHURY *v.* MAHOMED HOSSAIN CHOWDHURY (1916) . . **I. L. R. 43 Calc. 986**

COMPANIES ACT (VI OF 1882).

——— **ss. 58, 147**—*Liquidation—List of contributories—Rectification of register of shareholders—Transfers signed by transferor and transferee and lodged before winding up of the Company—Practice of the Company in approving of the transfer—Transferee's name not registered, effect of—No default, or unnecessary delay, or absence of sufficient cause in dealing with shares—Liability of transferee as contributory.* The applicant, a shareholder in the Indian Specie Bank, Ltd., sold some of his shares to the respondents by various transfers which were lodged with the Company for registration. The Company, however, went into liquidation before the transfers were in due course approved of by the Board of Directors. According to the practice observed by the Company, transfers lodged up to the end of the previous week were placed before the Board of Directors at their meeting in the following week. The Company went into liquidation on the 29th of November 1913. At a meeting of the Board of Directors held on the previous day, the transfers lodged in the previous week up to the 22nd of November only were considered. The transfers in dispute were lodged with the Company between the 25th and 28th of November 1913. The applicant was accordingly placed by the liquidator on the list of contributories in Schedule A for the shares which stood in his name on the 29th of November 1913. The applicant contended that the register of shareholders should be rectified by the Court under ss. 58 and 147 of the Indian Companies Act (VI of 1882) by substituting the names of the respondents as transferees in place of his own name. *Held*, that as the applicant had not proved that there was either absence of sufficient cause, or default, or unnecessary delay on the part of the Company in dealing with the transfers, the register of shareholders could not be rectified. SORABJI NUSSERWANJI *v.* C. A. PATWARDHAN (1915) **I. L. R. 40 Bom. 134**

——— **ss. 61, 125, 151**—*Company—Winding up—Contributory—Liability of contributory for calls.* Once a member of a Company is upon the list of contributories, unless he suceeds in showing as against the liquidator that he should not have been put on the list of contributories, he is liable for all those matters in respect of which he may be charged in the event of the company being wound-up, that is to say, to the extent of his original share held in the company which remains unpaid he is liable to contribute to the assets of the company, for payment of the debts due to creditors and the expenses of the winding-up under s. 61 of the Indian Companies Act, 1882. He is therefore liable in respect of unpaid calls, even though, as against the company the realization of such calls may have become barred by limitation. *Sorabji Jamsetji* v. *Ishwardas Jugjiwandas, I. L. R. 20 Bom. 354*, and *Vaidiswara Ayyar* v. *Siva Subramania Mudaliar I. L. R. 31 Mad. 66*, followed. JAGANNATH PRASAD *v.* U. P. FLOUR AND OIL MILLS COMPANY, LIMITED (1916) . . . **I. L. R. 38 All. 347**

COMPANIES ACT (VI OF 1882)—*concld.*

——— **s. 61**—*concld.*

——— **s. 169**—*Civil Procedure Code, 1908, O. XXI, r. 58 and 63—Appeal.* The right of appeal under the provisions of s. 169 of the Companies Act (VI of 1882) is co-extensive with the right of appeal conferred by the Code of Civil Procedure. In the liquidation proceeding of the Indian Exchange Bank a certain person described as the proprietor of a certain firm was directed by the Additional Judge of Lahore to pay a certain sum as a contributory. This order was sent to the District Judge of Agra for execution, when another person put in an objection to the effect that he was the sole proprietor of the firm. The District Judge declined to consider this objection. *Held*, that no appeal lay from the Judge's order, inasmuch as it was under O. XXI, r. 36, the objection being under O. XXI, r. 58. SANTI LAL *v.* The INDIAN EXCHANGE BANK (1916) . . . . **I. L. R. 38 All. 537**

COMPANIES ACT (VII OF 1913).

——— **ss. 2 (3), 3 (3), 171, 215, 232**—

See LIQUIDATOR **I. L. R. 43 Calc. 586**

——— **s. 207**—*Voluntary liquidation—Decree passed against company prior to liquidation—Stay of execution—Jurisdiction.* A decree had been obtained against a company which subsequent to the passing of the decree went into voluntary liquidation. The decree-holder applied for execution of the decree which was granted by the Court of first instance. On appeal, the District Judge ordered stay of execution. *Held*, that the District Judge had no jurisdiction to stay execution. Under the Indian Companies Act the only Court that could stay execution was the High Court. *Held*, further, that s. 207 of the Indian Companies Act is no bar by itself to the progress of execution unless and until an order has been obtained from a Court having jurisdiction under the Companies Act, either for winding up or for stay of proceedings. SURAJ BHAN *v.* BOOT AND EQUIPMENT FACTORY, AGRA, 1916) **I. L. R. 38 All. 407**

COMPANY.

See COMPANIES ACT (VI OF 1882), SS. 58, 147 . . **I. L. R. 40 Bom. 134**

COMPANY—*concld.*

See COMPANIES ACT (VI OF 1882), SS. 61, 125, 151 . **I. L. R. 38 All. 347**

See INCORPORATED COMPANY. **I. L. R. 43 Calc. 790**

COMPENSATION.

See MADRAS ESTATES LAND ACT (I OF 1908), S. 6 AND SUB-S. (*6*) AND (*8*). **I. L. R. 39 Mad. 944**

See MUNICIPAL LAW. **L. R. 43 I. A. 243**

See SPECIFIC MOVEABLE PROPERTY. **I. L. R. 39 Mad. 1**

See TRANSFER OF PROPERTY (ACT IV OF 1882), S. 83 **I. L. R. 39 Mad. 579**

COMPLAINANT.

——— resiling before hearing, effect of—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 345. **I. L. R. 39 Mad. 946**

COMPLAINT.

See FALSE INFORMATION. **I. L. R. 43 Calc. 173**

See PENAL CODE (ACT XLV OF 1860), S. 498. . **I. L. R. 38 All. 276**

COMPOSITION OF OFFENCE.

See COMPOUNDING OF OFFENCE.
See CRIMINAL TRESPASS. **I. L. R. 43 Calc. 1143**

———in revision—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 439 **I. L. R. 39 Mad. 604**

COMPOUND INTEREST.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 83. **I. L. R. 39 Mad. 579**

COMPOUNDING CRIMINAL CASE.

See AGREEMENT . **20 C. W. N. 946**

COMPOUNDING OF OFFENCE.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 345 **I. L. R. 39 Mad. 946**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 439 **I. L. R. 39 Mad. 604**

COMPROMISE.

See CIVIL PROCEDURE CODE (1908), O. XXIII, R. 3 . **I. L. R. 38 All. 75**

See CONTRIBUTION **I. L. R. 38 All. 237**

See HINDU LAW—WIDOW. **I. L. R. 38 All. 679**

COMPROMISE—*concld.*

See MISTAKE . **I. L. R. 43 Calc. 217**

See REGISTRATION ACT (XVI OF 1908), SS. 17, 49 . **I. L. R. 38 All. 366**

See TRANSFER OF PROPERTY (IV OF 1882), S. 6. . . **I. L. R. 38 All. 107**

——— between co-executors, validity of—

See HINDU LAW—WILL. **I. L. R. 39 Mad. 365**

——— decree on—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXII, R. 7. **I. L. R. 39 Mad. 853**

——— joint bond, as part of—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), S. 462 **I. L. R. 39 Mad. 409**

——— on behalf of minor, without leave of Court—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), S. 462 **I. L. R. 39 Mad. 409**

——— *Compromise, if not recorded, effect of—Consent decree—Appeal—Civil Procedure Code (Act V of 1908), s. 96, cl. (3) ; O. XXIII, r. 3 ; O. XLIII, r. 1, cl. (m).* A (consent) decree under r. 3. of O. XXIII of the Civil Procedure Code can be passed only after there has been an order that the compromise be recorded. This is not a mere matter of form, as the aggrieved party has a right of appeal against this order, and s. 96, cl. (*3*) of the Code is not otherwise a bar to an appeal from such a decree. PABAN SARDAR *v.* BHUPENDRA NATH NAG (1915) **I. L. R. 43 Calc. 85**

COMPULSION OF LAW.

——— payment under—

See DEPOSIT IN COURT. **I. L. R. 43 Calc. 269**

CONFESSION AND STATEMENT.

——— difference between—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 164. **I. L. R. 39 Mad. 977**

CONFIDENTIAL COMMUNICATIONS.

——— test of—

See EASEMENTS ACT (V OF 1882), S. 15. **I. L. R. 39 Mad. 304**

CONSENT DECREE.

See COMPROMISE **I. L. R. 43 Calc. 85**

CONSIDERATION.

——— failure of—

See CONTRACT ACT (IX OF 1872), SS. 20, 65 . . **I. L. R. 40 Bom. 638**

CONSIDERATION OF HUNDI.

See HUNDI SUIT ON. **I. L. R. 40 Bom. 473**

CONSOLIDATION OF APPEALS.

See APPEAL . **I. L. R. 43 Calc. 95**

CONSTRUCTION.

See HINDU LAW—WILL.
I. L. R. 43 Calc. 432

CONSTRUCTION OF CONTRACT.

See CONTRACT ACT (IX OF 1872), S. 56.
I. L. R. 40 Bom. 301

CONSTRUCTION OF DEED.

——————— *Deed of sale—Contemporaneous agreement to reconvey on payment of consideration—Lease for a term of years—Sale deed amounts in effect to a deed of mortgage—Debt treated as continuing—Property treated as security for repayment of debt.* The plaintiffs executed in favour of the defendants a sale deed of lands for Rs. 2,500, a large part of which consisted of old bond-debts. Contemporaneously with it, two more documents were executed between the parties. One of them was an agreement of reconveyance executed by the defendants to the plaintiffs, agreeing to reconvey the lands, (i) if the sum of Rs. 2,500 was repaid at a certain specified date ; and (ii) on repayment with interest of sums if any spent by the defendants upon the lands or of any further sums borrowed from them. The other document was a lease executed by the plaintiffs under which they took the lands on lease from the defendants for a period of ten years at an annual rental of Rs. 287, which seemed to have been made up of Rs. 62, the Government assessment on the lands, and Rs. 225 reserved as rent representing nine per cent. on the principal sum of Rs. 2,500. The plaintiffs filed the present suit for a declaration that the sale-deed passed by them was in reality a mortgage and for an order allowing the plaintiffs to redeem the lands on payment to the defendants of any sum that might be found due to them on accounts taken under the Dekkhan Agriculturists' Relief Act. The trial Judge was of opinion that the transaction was a sale while the District Judge on appeal held it was a mortgage by conditional sale. The defendants having appealed : *Held*, that the transaction was in reality a mortgage by conditional sale inasmuch as the apparent price, *viz.*, Rs. 2,500, was not the real price of the sale but was treated and regarded as a continuing debt between the parties, the property being made security for the repayment of that debt. *Maruti* v. *Balaji, 2 Bom. L. R. 1058*, followed. KASTURCHAND LAKHMAJI *v.* JAKHIA PADIA (1915) . **I. L. R. 40 Bom. 74**

CONSTRUCTION OF DOCUMENTS.

See CONTRACT ACT (IX OF 1872), S. 74.
I. L. R. 38 All. 52

See EVIDENCE ACT (I OF 1872), S. 94.
I. L. R. 38 All. 103

See HINDU LAW—ADOPTION.
I. L. R. 40 Bom. 668

See MORTGAGE . **I. L. R. 38 All. 97**

See WILL . **I. L. R. 38 All. 214**

CONSTRUCTION OF DOCUMENTS—*contd.*

1. ——————— *Covenant in sale deed that vendee would pay revenue on other land of the vendor—Land subsequently transferred—Regulation No. XXXI of 1803, s. 6.* In 1884 one Altaf Husain sold certain land to the predecessor of the defendants and reserved some land for himself. The sale deed contained a covenant to the effect that the vendee would pay the Government revenue not only for the land purchased by him but also for the land reserved by the vendor for himself. The vendor subsequently sold the reserved land to the plaintiff, who, when the representatives of the original vendee refused to pay the Government revenue, paid it himself and sued to recover from them the amount so paid which the plaintiff had to pay owing to the defendants' refusal to pay. *Held*, (i) that the agreement was void under Regulation XXXI of 1803, which was in force in 1884; and (ii) that in any case the covenant was a personal one and the plaintiff had no right to sue in respect of its breach. *Sahib Ali* v. *Subhan Ali, I. L. R. 21 All. 12, Sri Thakurji Maharaj* v. *Lachmi Narain, 11 All. L. J. 212*, and *Ram Govind* v. *Sri Thakurji Maharaj, 11 All. L. J. 231*, referred to. ALI HUSAIN *v.* HAKIM-ULLAH (1916) . **I. L. R. 38 All. 230**

2. ——————— *Deed of sale followed after an interval by an agreement for repurchase after stated period—Mortgage by conditional sale—Right of redemption—Intention of parties as evidenced by language of deeds, conduct of parties and surrounding circumstances—Suggested evasion of prohibition against interest by Mahomedans—Regulations I of 1778, and XVII of 1806.* The question in this appeal was whether two instruments in writing, a deed, dated the 29th of August, 1852, executed by the appellant's predecessors in title, purporting to be a deed of absolute sale of certain property, and an agreement, dated the 5th of September, 1852, executed by the predecessors in title of the respondents reserving to the vendors a right to repurchase the property sold, on repayment of the original purchase money within nine or ten years, constituted, when taken together, a mortgage by way of conditional sale of the property or an absolute sale of it with an agreement for repurchase. The deeds were separately stamped, and registered on different dates. The vendors never availed themselves of the conditions of repurchase, and the appellant sued in 1907 for redemption. The parties to the suit were Mahomdans. Their Lordships of the Judicial Committee were of opinion that the intention of the parties, which was the test in such a case, must be gathered from the language of the documents themselves viewed in the light of the surrounding circumstances, and came to the conclusion that on this principle the decree of the High Court appealed from, that the transaction was an out-and-out sale, and not a mortgage by conditional sale, should be affirmed. *Bhagwan Sahai* v. *Bhagwan Din, I. L. R. 12 All. 387 ; L. R. 17 I. A. 98*, followed. *Balkishen Das* v. *Legge, I. L. R. 22 All. 149 ; L. R. 27 I. A. 58*, distinguished. *Alderson* v. *White, 2 DeGex & J. 97*, referred to. The provisions of a bond exe-

CONSTRUCTION OF DOCUMENTS—*concld.*

cuted by the parties of even date with the sale deed refuted the suggestion that any of the parties to the sale deed held any religious scruples against the payment or receipt of interest on money lent, or that when intending to create a mortgage they would have adopted special methods of conveyancing to conceal the fact that interest for the loan was in fact to be given and received. With reference to a remark of Lord CRANWORTH, L. C., in *Alderson v. White*, that "I think a Court after the lapse of 30 years ought to require cogent evidence to induce it to hold that an instrument is not what it purports to be," their Lordships, commenting on the facts that the period of 10 years fixed in the present case for repurchase terminated in 1853 : that the suit was instituted on the 5th of October, 1907, 44 years after the lapse of that period ; that the judgment appealed from was delivered on the 11th of March, 1911; that the record was not received at the Privy Council office till the 25th of February 1915, and the appeal not set down for hearing until June, 1916, said "litigation so prolonged becomes an instrument of oppression, is discreditable to any judicial system, and every effort should be made to correct the abuse." JHANDA SINGH *v.* WAHID-UD-DIN (1916) . **I. L. R. 38 All. 570**

3. ——— *Sale or mortgage—Sale with option of re-purchase—Transfer of Property Act (IV of 1882), s. 58, cl. (c).* The plaintiffs mortgaged in 1899 with the defendants 92 fields for Rs. 8,000, the rate of interest agreed upon being 8 per cent. per annum. In 1904, the parties made up accounts under the mortgage and of other transactions, and the plaintiffs were found indebted to the defendants for Rs. 13,000. To pay the amount the plaintiffs sold to the defendants 20 out of 92 fields mortgaged. The sale-deed contained the provision that if within the period of 20 years the plaints repaid Rs. 13,000 in one lump sum or in instalments the defendants should reconvey the lands to the plaintiffs. On the same day the plaintiffs executed to the defendants a permanent lease of the lands sold at a fixed annual rental of Rs. 412-8-0. The plaintiffs alleged that the transaction of 1904 was a mortgage, and sued to redeem the same in 1911, on accounts being taken under the Dekkhan Agriculturists' Relief Act. *Held*, that the transaction in dispute was not a mortgage, but a sale with an option to the plaintiffs to repurchase. NARAYAN RAMKRISHNA *v.* VIGHNESHWAR (1915). . . **I. L. R. 40 Bom. 378**

CONSTRUCTION OF STATUTES.

——— *Interpretation—Preamble.* Though the preamble of an Act does not control any plain enactment which follows it, it may be a most useful guide when a question of doubt arises upon the construction of a particular provision and considerations relating to the scope of the Act are involved,' SITAL CHANDRA CHOWDHURY *v.* DELANNEY (1916) **20 C. W. N. 1158**

CONSTRUCTIVE NOTICE.

See MORTGAGE **I. L. R. 43 Calc. 1052**

CONTEMPT OF COURT.

See ANONYMOUS COMMUNICATION.
I. L. R. 43 Calc. 685

See LEGAL PRACTITIONERS ACT (XVIII OF 1879), S. 14
I. L. R. 39 Mad. 1045

CONTINGENT BEQUEST IN FUTURO.

See HINDU LAW—WILL.
I. L. R. 43 Calc. 432

CONTRACT.

See CONSTRUCTION OF CONTRACT.
I. L. R. 40 Bom. 301

See CONTRACT TO LEND OR BORROW.

See FORWARD CONTRACT.
I. L. R. 40 Bom. 517

See GUARDIAN AND MINOR.
I. L. R. 38 All. 435

See IMPOSSIBLE CONTRACT.
I. L. R. 40 Bom. 529

See SPECIFIC PERFORMANCE.

——— **breach of, by labourer or maistry—**

See MADRAS PLANTERS LABOUR ACT (I OF 1903), SS. 24, 35.
I. L. R. 39 Mad. 889

——— **construction of—**

See SALE OF GOODS.
I. L. R. 43 Calc. 305

——— **for monthly deliveries—**

See SALE OF GOODS.
I. L. R. 43 Calc. 305

——— **illegality of—**

See CONTRACT ACT (IX OF 1872), SS. 56 (2) AND 65.
I. L. R. 40 Bom. 570

——— **rescission of—**

See SALE. . **I. L. R. 43 Calc. 790**

1. ——— *Sale of goods—Calcutta Baled Jute Association's contract—Effect of clause containing home guarantee—Arbitration in London between Calcutta purchaser and London purchaser, whether binding on Calcutta seller.* R. D. & Co., a firm carrying on business in Calcutta as balers of jute, sold 500 bales of jute to E. D. S. & Co. for shipment to London. The contract contained a clause in writing, known in the export trade as "a Home Guarantee," that is, a clause by which the Calcutta seller guaranteed the weight, condition and quality at the port of destination. E. D. S. & Co. sold the jute to a London buyer, who claimed an allowance for inferiority of quality ; and upon an arbitration in London an award was given against E. D. S. & Co. R. D. & Co. brought this suit in Calcutta against E. D. S. & Co. to recover the price of the 500 bales of jute. E. D. S. & Co. contended that they were not liable on the ground that under the terms of the contract R. D. & Co. had guaranteed the condition and quality of the goods at the port of destination ; that by the

CONTRACT—*contd.*

award the goods had been invoiced back to the sellers; and that in terms of the contract R. D. & Co. were bound by the award. *Held*, that the clause in writing, that is to say the 'home guarantee,' does not mean that a London award in a submission by the Calcutta purchaser and the London purchaser in accordance with the rules and conditions of the London Association contract of 1913, would be binding in a dispute between the Calcutta seller and the Calcutta buyer. To make such an award binding upon a total stranger to the London submission there should be a clear and unambiguous agreement to that effect. *Held*, also, that although it may be correctly contended that any dispute about quality, between the Calcutta seller and the Calcutta buyer may be validly referred to arbitration in London in accordance to that clause, the meaning of the clause cannot be extended so as to make an award between the Calcutta purchaser and the London purchaser binding upon the Calcutta seller. RAM DUTT RAMKISSEN DASS *v.* E. D. SASSOON & Co. (1915) **I. L. R. 43 Calc. 77**

2. ——— *Trafficking in offices—Official corruption—Contract for return of money paid to Nazir to secure appointment as peon—Suit to enforce such contract, maintainability of—Public policy—Contract Act (IX of 1872), ss. 23, 65.* The sale of a recommendation, nomination or influence in procuring a public office is illegal and void, for trafficking in offices would inevitably tend to official corruption: and the Court will not assist a party who has entered into a contract tainted by moral turpitude, both sides being *particeps criminis, in pari delicto. Tappenden* v. *Randall, 2 Bos. & P. 467; 5 R. R. 662*, followed. A suit to enforce a contract for the return of money paid to a *Nazir* to secure an appointment as a District Court peon for the plaintiff's son is not maintainable. *Bai Vijli* v. *Nansa Nagar, I. L. R. 10 Bom. 152*, referred to. *Pichakutty* v. *Narayanappa, 2 Mad. H. C. R. 243*, discussed and distinguished. Such an agreement is void *ab initio*, its object being opposed to public policy within the meaning of s. 23 of the Indian Contract Act: while s. 65 thereof applies to an agreement *subsequently* (*i*) found to be void, (*ii*) or made void by supervening circumstances. *Bakshi Das* v. *Nadu Das, 1 C. L. J. 261*, and *Gulabchand* v. *Ful Bai, I. L. R. 33 Bom. 411*, considered inapplicable. LEDU COACHMAN *v.* HIRALAL BOSE (1915). . **I. L. R. 43 Calc. 115**

3. ——— *Part performance, equitable doctrine of, if may be invoked by stranger to—Relinquishment of share in tenure without registered deed but for consideration by purchaser out of possession to person in possession—Remand order, scope of.* Where a permanent tenure having been sold in execution of a decree for rent obtained against G, the question was whether C at the date of the sale had a subsisting interest in the tenure, so that (if he had) certain under-tenures held by G were not touched by the sale, and it appeared that C having acquired a share in the tenure at an execution sale, had subsequently for consideration

CONTRACT—*contd.*

relinquished the share to G who was and continued in possession but no conveyance was executed to give effect to this transaction: *Held*, (in a suit by the purchaser at the rent sale to eject G), that though a mere admission or disclaimer cannot operate to pass title to property where a conveyance is required under the law to transfer title, here G could have sued C for specific performance of the contract and G could have sucessfully resisted a suit to recover possession by C. That by the application of the equitable doctrine of part performance, C was precluded from setting up any title against G and had no subsisting right to the share at the date of the rent suit. *Walsh* v. *Lonsdale, L. R. 21 Ch. D. 9, Puchha Lal* v. *Kunj Behari Lal, 18 C. W. N. 445*, and *Mohammed Musa* v. *Aghore Kumar Ganguli, L. R. 42 I. A. 1: I. L. R. 42 Calc. 801*, relied on. *Jadunath Poddar* v. *Rup Lal Poddar, 4 C. L. J. 23: s. c. 10 C. W. N. 650, Oodey Koowur* v. *Ladoo, 13 Moo. I. A. 585*, and *Dharam Chand Baid* v. *Mauji Sahu, 16 C. L. J. 436*, distinguished. *Held*, further, that the purchaser though no party to the contract, was entitled to invoke the aid of this doctrine in the same way as a creditor could in respect of contract of purchase made by his debtor with a stranger. That a remand order by the High Court directing a trial upon the issue whether C had a subsisting interest in the property covered an enquiry as to whether C. had lost his interest in the property by the operation of the equitable doctrine of part performance. KHAGENDRA NATH CHATTERJEE *v.* SONATON GUHA (1915) . **20 C. W. N. 149**

4. ——— *Bond signed by defendant only, and registered, suit upon.* A contract in writing in this country does not necessarily imply that the document must be signed by both the parties thereto. *Apaji Bapuji* v. *Nil Kanta, 3 Bom. L. R. 667, Ramasami Chetti* v. *Sekhanoda Chetti, 1 Mad. L. J. 737, Girish Chandra* v. *Kunjo Behary, I. L. R. 35 Calc. 683: s. c. 12 C. W. N. 628, Ambalayani Pandarama* v. *Vaguram, I. L. R. 19 Mad. 52, Kotappa* v. *Vallur Zemindar, I. L. R. 25 Mad. 50, Zemindar of Vizianagram* v. *Behara Suryanarayana, I. L. R. 25 Mad. 587*, and *Sanney Kotappa* v. *Venkata Narasimham Naidu, 11 Mad. L. J. 125*, referred to. CHELLAPHROO CHOWDHURI v. BANGA BEHARI SEN (1915) . **20 C. W. N. 408**

5. ——— *Conditional proposal to make provision for the plaintiff by purchase of immoveable property on condition of her living with the promisor until her death—Acceptance by plaintiff and performance of condition—Suit against heirs of promisor to recover village purchased for plaintiff by relative, a wealthy and childless Rani—Limitation—Representation—Practice of Privy Council—Grant of special leave to cross-appeal.* This appeal arose out of a suit brought by the appellant for possession of a village called Repudi which had belonged to her great-aunt, a wealthy, childless and widowed Rani, and to which on her death in 1899, the three defendants had in litigation between themselves been declared to be entitled in equal shares as her heirs. The appellant had been

CONTRACT—*concld.*

brought up by the Rani from an early age, and had lived with her until 1886, when she was married; and then the Rani being anxious that the appellant should not leave her offered (amongst other things) to make ample provision for her by the purchase of immoveable property in consideration that she and her husband would continue to reside with her. This they did until 1893, during which time the Rani purchased two small properties in her own name and transferred them after a time to the appellant. In 1893 the Rani purchased Repudi also in her own name though, making no concealment of her intention that the appellant was eventually to have it : but the Rani's delay in transferring it to her caused unpleasantness, and the appellant's husband left and went to his own home. Negotiation took place, and eventually the Rani on 12th October 1893 wrote to the appellant a letter in which she said, " Repudi was purchased for you alone. I shall retain it under me so long as I am alive and afterwards convey it to you yourself." Thenceforth the appellant and her husband lived with the Rani until her death. *Held* (reversing the decision of the High Court), that the letter was not merely an expression of intention but a conditional promise by the Rani, and the promise was accepted and the condition performed by the appellant and her husband, and there was accordingly a complete contract between the parties. *Maunsell* v. *Hedges, 4 H. L. C. 1039, Maddison* v. *Alderson, L. R. 8 A. C. 467,* and *Jordan* v. *Money, 5 H. L. C. 185,* referred to and discussed. *Held,* also, that the Rani's dying declaration constituted a re-affirmation and confirmation of the contract ; the true effect of the language being to declare that Repudi was already the appellant's, and that the Rani knew an oral bequest to be unnecessary. From such a contract it was not open for those representing the Rani or her estate to resile from or fail to perform the obligation to deliver possession of the village to the appellant, such possession to take effect from the Rani's death. The cause of action in the suit was on a ground common to all the defendants. The third defendants did not appeal from either of the decree against him in the District Court and in the High Court. He was, however, in each case made a respondent by another defendant who appealed. On the present appeal by the plaintiff to the Privy Council, the Judicial Committee granted the application of the third defendant to be made a respondent and in that capacity granted him special leave to bring a cross-appeal notwithstanding that his right of appeal to His Majesty in Council had then become barred by the Limitation Act. VENKAYYAMMA RAO *v.* APPA RAO (1916)

I. L. R. 39 Mad. 509

CONTRACT ACT (IX OF 1872).

——— **ss. 20 and 65**—*Fraudulent representation and impersonation by one of the executants of a deed—Mistake as to a matter of fact essential to the agreement—A person fraudulently mortgaging property not his own—Mortgagee believing in good faith the mortgagor to be owner of property—Transfer of*

CONTRACT ACT (IX OF 1872)—*contd.*

——— **s. 20**—*concld.*

mortgage by mortgagee in favour of a third party —Deed of transfer signed by the mortgagor as a concurring party, the mortgagor again fraudulently representing to be owner—Transferor and transferee acting under the belief that the real owner concurred in the transfer—Failure of consideration —Avoidance of contract. Under the will of their father, J. F. and L. M. became entitled as tenants-in-common to equal moieties of a house at Mazagaon in Bombay. The third son C was given a right of residence in the house so long as he lived in harmony with his brothers and sisters. C, however, fraudulently representing himself to be his brother, L. M., purported to create a mortgage of a moiety of the said house in favour of the defendant. Subsequently the defendant in consideration of a sum of Rs. 1,770 paid to him by the plaintiff, transferred the said mortgage in favour of the plaintiff. The plaintiff having insisted that the said L. M. should be a party to the deed of transfer, C fraudulently representing himself to be L. M. joined in executing the said deed as a concurring party. The plaintiff having discovered that the mortgage and the transfer deeds were not executed by L. M. but by a forger in his name, sued the defendant as transferor for return of the purchase money, as on a total failure of consideration. The trial Judge applied the maxim " *caveat emptor* " and dismissed the suit. The plaintiff thereupon appealed? *Held,* that the defendant was bound under s. 65 of the Indian Contract Act to repay the purchase money to the plaintiff inasmuch as both parties being in the belief that the real owner had joined in the transfer were under a mistake as to a matter of fact essential to the agreement which was, therefore, avoided under s. 20 of the Indian Contract Act. ISMAIL ALLARAKHIA *v.* DATTATRAYA (1916) . . **I. L. R. 40 Bom. 638**

——— **s. 23**—

See EXPECTANCIES

I. L. R. 39 Mad. 554

——— *Forest Act (VII of 1878) —License—Agreement to enter into partnership contravening the terms of the license—Agreement not unlawful.* An agreement to share profits which would contravene the terms of the license as between the Forest Officer and the licensee is not forbidden by law, nor would it defeat the provisions of any law. *Raghunath Lalman,* v. *Nathu Hirji Bhate, I. L. R. 19 Bom. 626,* distinguished. NAZARALLI SAYAD IMAM *v.* BABAMIYA DUBEYATIMSHA (1915)

I. L. R. 40 Bom. 64

——— **ss. 23, 65**—

See TRAFFICKING IN OFFICES.

I. L. R. 43 Calc. 115

——— **s. 24**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11, **I. L. R. 40 Bom. 614**

CONTRACT ACT (IX OF 1872)—*contd.*

——— s. 37—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 54 **I. L. R. 39 Mad. 462**

——— s. 44—

See JOINT JUDGMENT-DEBTORS. **I. L. R. 39 Mad. 548**

——— s. 47—*Sale and purchase of cotton goods—Forward contract, March delivery—Contract not to be cancelled on any account—Contract governed by the Rules of the Bombay Trade Association—Rule 17 of the Bombay Cotton Trade Association—Vendor bound to tender goods without demand from the purchaser—Railway receipt not a delivery order—Vendor committing a breach cannot sue in damages—Vendor not mulcted in costs, breach being technical.* By a contract, dated the 25th January 1914, the defendant agreed to purchase from the plaintiff 200 bales of cotton—March delivery, between the 15th and 25th. The contract was expressed to be, in all details, governed by the Rules of the Bombay Cotton Trade Association, subject to the exception that it was not to be cancelled on any account. Under Rule 17 of the Rules of the Bombay Cotton Trade Association, the vendor was bound to tender a delivery order backed by the goods before 1 P.M., of due date. In the event of his failure to do so, the buyer had three course open to him: (i) to cancel the contract; (ii) to buy at seller's risk; (iii) to close at the room-rate of the day. On the 19th March 1914, the plaintiff handed over to the defendant a railway receipt for 100 bales. On the 25th March 1914, the defendant applied to the railway authorities for delivery of the goods, and failing to get the same returned the railway receipt the next day to the plaintiff informing him that by reason of non-performance on the plaintiff's part, the contract had been cancelled by the defendant. The plaintiff, relying upon the clause of the contract precluding either party from cancelling the same in any event, claimed the sum of Rs. 2,279-13-0, the difference between the contract price and the market price in respect of 100 bales. The plaintiff further contended that giving a railway receipt was tantamount to giving possession of the goods, and that inasmuch as the defendant had accepted the railway receipt and did not notify the plaintiff that the goods had not come to hand before due date, he was estopped from pleading that the plaintiff had not made a sufficient tender under Rule 17 of the Bombay Cotton Trade Association. *Held*, (i) that it was the plaintiff's duty to satisfy himself that the goods covered by the receipt had actually arrived before due date, and that, if he failed to do so, he would not be absolved from the obligation of tendering the delivery order backed by the goods according to the contract; (ii) the plaintiff having shown himself to be in the breach, could not approach the Court and sue for damages on the contract. *Vanmali Hargovind* v. *Tarachand Ganeshamdas, (1891) Chitty & Patell's Bom. S. C. C. Cas., 305*, referred to. MUKUNCHAND RAJARAM *v.* NIHALCHAND GURMUKHRAI (1915) . **I. L. R. 40 Bom. 517**

CONTRACT ACT (IX OF 1872)—*contd.*

——— s. 55—*When time may be considered of the essence of a contract—Where intention to make time of essence of contract is not specifically expressed in unmistakeable terms—Rule of equity to disregard letter of contract, and take contract substantially as meaning completion of it within reasonable time—What takes place prior to signing of contract but nothing that takes place afterwards, to be looked at in judging of intention.* By an agreement, dated 8th July 1911, the defendant (respondent) agreed to sell his interest in certain land which he held on lease from the Secretary of State for India, to the plaintiff (appellant) for Rs. 85,000 of which Rs. 4,000 was paid on execution of the agreement, and it was agreed that the title was to be made marketable, and that Rs. 80,500 should be paid on the execution of the deed of sale which was to be prepared and received within two months from the date of the agreement, and Rs. 500 on the transfer of the land after the conveyance should have been registered; and there was a clause to the effect that if the purchser did not pay the amount of the purchase money within the fixed period he should forfeit his right to the earnest monies and the vendor should be at liberty to resell the property. On 3rd October 1911 requisitions as to title were made by the appellant. The respondent did not comply with the requisitions, but on 6th October he asserted a right to put an end to the contract on the ground that time was of its essence, and claimed to be entitled to the deposit of Rs. 4,000 as the appellant had failed to complete his purchase within the time fixed. In a suit for specific performance. *Held*, (reversing the appellate judgment of the High Court), that time was not of the essence of the contract. S. 55 of the Contract Act (IX of 1871) did not lay down any principle which differed from those that obtained as regards contracts for the sale of land by which equity in such a case looks, not at the letter, but at the substance of the agreement in order to ascertain whether the parties notwithstanding that they named a specific time within which completion was to take place, really intended no more than that it should take place within a reasonable time. *Lennon* v. *Napper, 2 Sch. & Lef. 682*, *Roberts* v. *Berry, 3 DeG. M. & G. 284, 289*, *Tilley* v. *Thomas, L. R. 3 Ch. 61*, and *Stickney* v. *Keeble, [1915] A. C. 386*, referred to as laying down the doctrine adopted by, and embodied in s. 55 in reference to sales of land. The special jurisdiction of equity to disregard the letter of the contract in ascertaining what the parties to it are to be taken as having really in substance intended as regards the time of its performance, may be excluded by any plainly expressed stipulation that time is intended to be of the essence of the contract. Equity will also infer an intention that time should be of the essence of a contract, from what has passed between the parties prior to the signing of the contract, the construction of which cannot, in the contemplation of equity, be affected by what takes place after it has once been entered into. *Held*, therefore, that there was nothing in the language of the agreement or the subject matter to displace the presumption that for the purpose of specific performance time was not

CONTRACT ACT (IX OF 1872)—*con'd.*

——— s. 55—*concld*

of the essence of the bargain. The subject matter or the character of the lease sold were not such as to take the case out of the class to which the principle of equity applies. The appellant did not bind himself, by his correspondence subsequent to the agreement, to a new agreement that time, if it was not originally of the essence, should be made so. As to the language of the agreement itself their Lordships agreed with the view of the Trial Judge that there was nothing said in it sufficient to exclude the equitable canon of interpretation; and with his conclusion that the defendant had no justification in claiming in the circumstances to treat time as of the essence. JAMSHED KHODARAM *v.* BURJORJI DHUNJIBHAI (1915)

I. L. R. 40 Bom. 289

——— s. 56—*Performance of contract becoming unlawful or impossible—Legal impossibility—Physical impossibility—Commercial impossibility—Force Majeure—Notifications under the Sea Customs Act (VIII of 1878)—Construction of contract—Charter-party—Bill of lading.* The plaintiffs, a firm of naturalised Germans, doing business in London made a contract on the 24th July 1914 with the defendant-firm through their London agent, by which the defendants agreed to supply the plaintiff-firm with 1,000 tons freight at 11 *s.* 6 *d.* per ton, the material to be carried being manganese from the Port of Bombay for Antwerp, shipment in September. On the 4th of August 1914 war broke out between Great Britain and Germany. On the 7th of August 1914, the Government of India, by a Proclamation duly published in Bombay under the Sea Customs Act prohibited the export from India of ammunition and explosives and all materials used in the manufacture thereof. Under the Sea Customs Act, the Government of India is only empowered to prohibit the export of specified articles or things, and the specification must be exact and *nominatim*. Manganese not being expressly specified in the last mentioned notification the Government of India issued on the 17th of October 1914 a further notification in supersession of the notification of the 5th of August, by which manganese was amongst other articles specifically prohibited. On the 7th of September 1914, the defendants relying on the earlier notification telegraphed to the plaintiffs that owing to *force majeure* the contract was cancelled. The plaintiffs refused to accept the cancellation and insisted upon the performance of the contract. They subsequently sued the defendants in damages in the sum of £525 or Rs. 7,937. The defendants pleaded: (i) that the export of manganese from India was prohibited by the Government of India notification of the 5th of August 1914 published in Bombay on the 7th of August 1914; (ii) that the performance of the contract became impossible as no freight was procurable during the month of September from Bombay to Antwerp; (iii) that it was an implied condition, and of the essence of the contract, understood by both parties to be so, that there should be freight available from Bombay to Antwerp. *Held*, (i) that

CONTRACT ACT (IX OF 1872)—*con'd.*

——— s. 56—*concld.*

having regard to the form of the earlier notification dated 5th of August 1914, the plaintiffs were right in contending that the defendants might have performed their part of the contract on the 7th of August 1914 without contravening any law, or being able to avoid it under s. 56 of the Indian Contract Act as having been made unlawful after they had entered upon it. (ii) The performance of the contract did not become impossible within the meaning of s. 56 of the Indian Contract Act, merely because freights from Bombay to Antwerp were not procurable from a commercial point of view, when the defandnats repudiated the contract. (iii) That no implied condition could be read into the contract that it was agreed by the parties that normal freight conditions should continue. (iv) That the defendants had committed a technical breach of contract, as the plaintiffs had not proved that they had any intention of shipping 1,000 tons of manganese to Antwerp in September, nor had they suffered any loss on account of non-shipment. Before a contract can be broken on the ground that the acts to be done have become impossible the Courts must be very sure that they are physically impossible. Physical impossibility must go much further than mere difficulty or the need to pay exorbitant prices. The latter part of s. 56 deals with cases where the acts to be done were at the time the contract was made lawful but a legal prohibition has supervened after the making, but before the performance of the contract, and extends to such cases the general principle of law applicable to all contracts and expressed in s. 23. KARL ETTLINGER *v.* CHAGANDAS & CO. (1915)

I. L. R. 40 Bom. 301

——— ss. 56, 65—*Contract of charter-party—Contract impossible of performance—Freight paid in advance—Export of goods shipped on board prohibited by Government—Claim for refund of freight—Bills of lading—Shipping orders—Common carriers—Carriers by sea—Private carriers—Carriers Act (III of 1865)—Carriers by sea excluded by the Carriers Act—Loss by way of demurrage.* On the 1st April 1915, the defendant Steamer Company entered into an agreement with C. & Co., a firm of freight contractors, whereby the latter chartered the steamer *Hejaz* for a voyage, Bombay to Naples, Genoa and—or Marseilles, any two discharging ports at charter's option. Subsequently, the *Jeddah* was substituted for the *Hejaz*. The plaintiffs procured from C. & Co., freight for 2,500 bales of cotton on the said steamer and were given the shipping orders which they presented to the defendants. The plaintiffs put 2,500 bales of cotton on board the *Jeddah* and the defendants issued twenty-five bills of lading relating to them, having received in advance Rs. 32,610-6-2 for freight. The import of cotton into Genoa being prohibited by orders of Government, the *Jeddah* did not leave the harbour and the voyage had to be adandoned. Eventually the steamer unloaded her cargo, and the plaintiff before getting delivery of their goods were required to deposit Rs. 12,500 to cover the expenses and loss

CONTRACT ACT (IX OF 1872)—*contd.*

———— **s. 56**—*concld.*

incurred by the ship. The said sum was deposited by the plaintiffs under protest. The plaintiffs subsequently demanded the return of Rs. 32,610-6-2 paid by them for freight, and on the defendants' disputing their liability to return the amount filed the suit for the recovery of the freight paid and for an account of Rs. 12,500 deposited to defray the costs of unloading. The defendants pleaded, (i) that money paid in advance for freight was irrecoverable at law; (ii) that they were common carriers and that the rights and liabilities of common carriers were governed by the principles of English law as modified by the Common Carriers Act of 1865; (iii) that in any event they were not liable to return the freight-money, as they were ready and willing to perform their part of the contract; and (iv) that they were entitled to retain Rs. 5,038-3-7 out of the sum deposited with them for expenses and loss incurred by the ship. *Held*, (i) that the contract became impossible of performance under s. 56 of the Indian Contract Act and that the defendants were bound under s. 65 of that Act to restore the sum of Rs. 32,610-6-2, being the advantage they had received under the contract; (ii) that on the evidence before the Court, the defendants could not be treated as common carriers, they having let out and chartered the whole ship to C. & Co., for a private gain; (iii) that carriers by sea in India are not entitled to the benefits of Act III of 1865; (iv) that the defendants were entitled to claim demurrage and expenses incurred for unloading the cargo. *Nugent* v. *Smith, 1 C. P. D. 423*, referred to. *The Irrawaddy Flotilla Company* v. *Bagwandas, I. L. R. 18 Calc. 620*, considered. BOGGIANO & Co. *v.* THE ARAB STEAMERS CO., LTD. (1915) . . . **I. L. R. 40 Bom. 529**

———— **ss. 56** (2), **65**—*Contract with hostile firm—Hostile firm incorporated in alien territories, and having a branch in Bombay—Contracts with enemy become illegal on the outbreak of war—Trading with enemy—Impossibility of performance owing to the outbreak of war—Proclamations and Ordinances on the outbreak of war between Great Britain and Germany—Hostile Foreigners Trading Order—Extension of time of performance, after breach—Waiver of breach.* The defendants were a German Joint-stock Company incorporated under the laws of Hanover, having a branch in Bombay, under the sole management of one C. B., a German subject. By a contract in writing between the plaintiffs and the defendants by their manager, dated the 18th of February 1914, the defendants agreed to purchase from the plaintiffs the total quantity of waste of the several descriptions specified in the contract produced in the plaintiffs' mills during the year ending the 31st December 1914 at the respective prices specified in the contract, and to take delivery of whatever waste might be ready at least once monthly. The defendants deposited with the plaintiffs 3½ per cent. Government Promissory Notes of the face value of Rs. 2,200 to be retained by the plaintiffs against the fulfilment of the contract. On the 4th August 1914, war was declared

CONTRACT ACT (IX OF 1872)—*contd.*

———— **ss. 56** (2), **65**—*contd.*

between Great Britain and Germany. On the 18th August, the plaintiffs wrote to the defendants calling upon them to take delivery of waste under the contract. On the 22nd August, the manager of the defendant company replied that on account of the existing political position the defendants were not allowed to do business in India and requested the plaintiffs to keep the delivery of waste standing over until business was allowed to be resumed. On the 5th September, the defendants' manager was interned as an alien enemy, the defendants' local business ceasing for all practical purposes. On the 11th November, the plaintiffs again called upon the defendants to take delivery of the waste, the defendants replying that they were unable to arrange for further delivery until the declaration of peace. On the 14th November, an order called the Hostile Foreigners Trading Order was issued by which an hostile foreigner or firm was prohibited from carrying on or engaging in any trade or business in British India except under a license issued by or under the authority of the Governor-General in Council subject to such conditions, restrictions and supervision as the Governor-General in council may direct. On the 3rd December, the plaintiffs again called upon the defendants to comply with their notice of the 11th November on or before the 8th December and subsequently extended the time for taking delivery until the 16th December. The defendants replied on the 18th December referring to the internment of their manager and claimed that under s. 56 (2) of the Indian Contract Act, the defendants were relieved from the performance of their part of the contract. On the 8th February 1915, the defendants obtained a license limited to the winding up and liquidation of their local business under Government supervision. On the 16th February the plaintiffs informed the defendants that they had sold the waste of which the defendants had been under contract to take delivery at a loss of Rs. 4,270-13-0 and after deducting the value of the deposit demanded payment of Rs. 2,074-13-2. On the 11th March, the plaintiffs filed the suit to recover the sum of Rs. 4,270-13-0 from the defendants and for a declaration that the plaintiffs were entitled to retain the 3½ per cent. Government Promissory Notes and to set off their value in part satisfaction of the decretal amount. The defendants pleaded (i) illegality of contract on the outbreak of war, (ii) impossibility of performance, and (iii) waiver on the part of the plaintiff granting extension of time of performance till the 16th December 1914. *Held*, (i) that the contract in suit became illegal on the outbreak of war and was dissolved on the 4th August 1914, (ii) that it had become impossible for the defendants to perform their part of the contract, owing to subsequent events arising from a state of war, (iii) that assuming that it only became so after the 14th November 1914, the plaintiffs gave the defendants further time for taking delivery until the 16th December and so waived any breach committed before that

CONTRACT ACT (IX OF 1872)—*contd.*

——— **ss. 56** (*2*), **65**—*concld.*

date, (iv) that the defendants were entitled to a return of their deposit under s. 65 of the Indian Contract Act. *Janson* v. *Driefontein Consolidated Mines, Limited*, [*1902*] *A. C. 484, 509, W. Wolf & Sons* v. *Carr, Parker & Co., Limited, 31 T. L. R. 407*, and *Kreglinger & Co.* v. *Cohen, 31 T. L. R. 592*, referred to. TEXTILE MANUFACTURING CO., LTD. *v.* SALOMON BROTHERS (1915)

I. L. R. 40 Bom. 570

——— **ss. 69 and 70**—*Suit for contribution —Co-owners—Purchasers of different portions of zamindari—Attachment for arrears of revenue—Payment by a purchaser of the whole amount of arrears —Suit by him for the entire amount against the zamindar and the other purchaser—Personal liability of registered holder only—Liability of share of the other purchaser—Zamindar liable, only for proportionate share—Sale-proceeds of zamindari, liability of—Property partly in Agency Tracts—Defendant-purchaser, resident therein—Jurisdiction of Subordinate Court.* The plaintiff was a purchaser in an auction sale held in execution of a decree, of some villages in a zamindari of which the first defendant was the registered holder. The sixth defendant was a similar purchaser of some other villages therein within the jurisdiction of the Agency Court. For default in payment of revenue accruing due subsequent to the plaintiff's purchase, one of the villages purchased by him was attached by the Government; the plaintiff paid the full amount due on the entire zamindari to save his village from revenue sale. The plaintiff brought the suit in the Subordinate Judge's Court against the first defendant, defendants Nos. 2 to 5 (who were his undivided brother, sons and nephew, respectively) and the sixth defendant, to recover the full amount paid by him from all the defendants personally and from the sale-proceeds of the rest of the zamindari kept in deposit in the Government treasury. The defendants pleaded non-liability in law for the full amount, while the sixth defendant raised the further plea that the Subordinate Judge's Court had no jurisdiction to entertain the suit as against him. *Held*, (*a*) that the only person who is personally bound to pay the revenue to the Government is the registered holder; (*b*) that a co-owner who pays to the Government the whole revenue due on an estate is not entitled to a personal decree against the other co-owners who, not being registered holders, are not under a personal obligation to pay the revenue, though it may be a charge on the lands in their holding; (*c*) that s. 70 of the Indian Contract Act does not apply to such a case; (*d*) that the Subordinate Judge's Court had no jurisdiction to entertain the suit as against the sixth defendant to enforce the charge on the villages purchased by him, as the lands did not lie within its jurisdiction; (*e*) that s. 69 of the Indian Contract Act does not apply to a suit for contribution, as "*the person interested in the payment of money*" must be a person who is not himself bound to pay the whole or any portion of the amount; (*f*) that the plaintiff was entitled to sue the first defendant only for contribution and to recover from him and from the sale-proceeds in deposit only the share of revenue payable on account of the property in the hands of the first defendant. *Subramania Chetti* v. *Mahalingasami Sivan, I. L. R. 33 Mad. 41, Prauykyi* v. *Pakaram Haji, 15 I. C. 262, Narain Pai* v. *Appu, 28 I. C. 456*, and *Futteh Ali* v. *Gunganath Roy, I. L. R. 8 Calc. 113*, followed. *Raja of Vizianagaram* v. *Raja Setrucherla Somasekharaz, I. L. R. 26 Mad. 713*, distinguished. *Gajapathi Kistna Chendra Deo* v. *Srinivasa Charlu, 25 Mad. L. J. 433, Raja of Pittapuram* v. *Secretary of State, 16 Mad. L. T. 375, Yogambal Boyee Ammani Ammal* v. *Naina Pillai Markayar, I. L. R. 33 Mad. 15, Mangalathammal* v. *Narayanaswami Ayyar, 17 Mad. L. J. 250, Manindra Chandra Nandy* v. *Jamahir Kumari, I. L. R. 32 Calc. 643*, and *Moule* v. *Garrett, 7 Ex. 101, 104*, referred to. JAGAPATI RAJU *v.* SADRUSANNAMMA ARAD (1915)

I. L. R. 39 Mad. 795

CONTRACT ACT (IX OF 1872)—*contd.*

——— **s. 69**—*concld.*

——— **s. 70**—*Payment made for another—Non-gratuitous payment—Obligation of person enjoying the benefit—Mortgage—Stranger paying off a subsisting mortgage—Subrogation.* The defendant No. 1 mortgaged his lands in 1893. In 1904, the mortgagee sued on the mortgage and obtained a decree for the mortgage amount or in default, the sale of the property. The mortgagee applied in 1905 for sale of the mortgaged property. About that time, the plaintiff went into possession of the lands on a ten years' lease from defendant No. 1. Shortly afterwards, defendant No. 2, who held a money-decree against defendant No. 1, brought the property to sale and purchased it himself. In 1907, the property was put up to sale in execution of the mortgagee's decree. But defendant No. 1 borrowed a sum of Rs. 2,463 from the plaintiff and paid off the mortgagee. Subsequently, defendant No. 1 sold a portion of the property mortgaged to plaintiff for Rs. 4,000, the consideration being made up of Rs. 2,463 with other sums lent to defendant No. 1 personally. In 1908, defendant No. 2 sued plaintiff to recover possession of the land; and obtained possession. The plaintiff filed the present suit to recover the amount of Rs. 4,000 from the defendants personally or by sale of the property. *Held*, that defendant No. 2 was not personally liable to re-pay Rs. 2,463 to the plaintiff under s. 70 of the Indian Contract Act (IX of 1872) for, it could not be said that the payment was made for defendant No. 2, the plaintiff having without reference to the second defendant, intruded himself in order to make the payment without the second defendant's knowledge. *Held*, further, that the land in possession of defendant No. 2 was chargeable with the sum of Rs. 2,463, because the plaintiff being a stranger who paid off a subsisting mortgage was entitled to be subrogated to the position of the mortgagee. *Held*, also, that defendant No. 1 was personally liable to make good the deficiency. *Per* BATCHELOR J.—"S. 70 of the Indian Contract Act makes provision for compensation to be paid by a person enjoying the benefit of a

CONTRACT ACT (IX OF 1872)—*contd.*

——— s. 70—*concld.*

non-gratuitous act, but for the operation of the section certain conditions are prescribed. They are that the thing done shall be lawfully done, that the intention shall not have been to do it gratuitously, and that the other person shall enjoy the benefit." TANGYA FALA *v.* TRIMBAK DAGA (1916) **I. L. R. 40 Bom. 646**

——— ss. 73, 107—

See DAMAGES . **I. L. R. 43 Calc. 493**

——— s. 74—

1. ——— *Sale—Construction of document—Condition of sale—Penalty—Vendor not entitled to recover more than provided for by conditions of sale.* A Town Improvement Trust, having acquired land for the purpose of making a new road, thereafter proceeded to sell sites along the road. Amongst the conditions of sale were that the purchaser was to deposit 10 per cent. of the purchase money immediately on the sale and the balance within nine months. There was a further condition that "if any purchaser fail to comply with any of these conditions, his deposit shall be forfeited, and the vendors shall be at liberty to re-sell the lot or lots sold to him either by public auction or by contract." *Held*, on suit by the Trust against a purchaser who had paid only Re. 1 at the time of his purchase and no more, that the plaintiff was only entitled to recover from the purchaser the 10 per cent. deposit which was one of the conditions of sale, and not the difference in price resultant on a re-sale of the property. MUNICIPAL BOARD OF ALLAHABAD *v.* TIKANDAR JANG (1915) **I. L. R. 38 All. 52**

2. ——— *Interest, excessive rate of—Court's power to declare rate a penalty and award reasonable interest.* The Court is competent to grant relief whenever the rate of interest appears to it to be penal. The fact that the rate of interest is excessive may be sufficient by itself to justify the inference that the rate was penal and unenforcible. Once the stipulated rate of interest is found to be unenforcible, the plaintiff is in the hands of the Court which will decree such rate of interest as may appear to it to be reasonable. *Abdul Majid v. Kherode Chandra Pal, I. L. R. 42 Calc. 690 : s. c. 19 C. W. N. 809*, and *Khagaram Das* v. *Ram Sankar Das, I. L. R. 42 Calc. 652, s. c. 21 C. L. J. 79 ; 19 C. W. N. 775*, referred to. CHELLAPHROO CHOWDHURI *v.* BANGA BEHARI SEN (1915) **20 C. W. N. 408**

——— ss. 81, 82, 83—*Usage of jute trade at Chandpur—Jute brought by fariahs and stored in Companies' godowns, burnt before weighment—Jute insured by Company—Incidence of loss—Title, passing of—Unascertained goods—Intention—English law.* Plaintiffs who were *fariahs* used to purchase loose jute from dealers (*beparis*) and sell them to, amongst others, defendants firm at Chandpur. The jute brought by the *fariahs* used to be stored in a godown called the "*fariahs*' godown," and

CONTRACT ACT (IX OF 1872)—*contd.*

——— ss. 81, 82, 83—*concld.*

according to the usage of trade at Chandpur, sale was not complete until the jute had been examined, selected and weighed by the purchasing firm. The goods were, however, kept subject to the firm's lien for advances to the *fariah*, and it appeared that, once the goods were stored in the godown, the *fariahs* were not allowed to remove or sell them to other persons. Some jute which was stored by plaintiffs in defendants' godown, and was insured by the latter as belonging to the firm, caught fire before it had been tested, selected and weighed and was burnt. *Held*, that title in the jute had not passed to the defendants, and the loss fell on the plaintiffs. That the contract being one for the sale of unascertained goods, what remained to be done by the buyer to the goods appropriated to the contract by the seller was not merely for the purpose of ascertaining the price but was also for the purpose of placing the buyers in a position to say whether and to what extent they would for their part accept the goods offered to them. That the fact that the seller could not remove or sell the goods from the godown did not show that the property in the jute had passed to the firm. That the defendants who had an interest in the goods were justified in insuring them to protect that interest, and were entitled to receive the whole amount of the policies of insurance to indemnify themselves against their loss, and were not bound to apply any portion of it to the plaintiff's benefit. When nothing remains to be done to the goods by the seller for the purpose of ascertaining the price, then *primâ facie* the property in them passes although they have not been weighed by the buyer. It would be otherwise in England if the parties intended that property in the goods should not pass until the goods had been weighed. The Indian law is the same and the provisions of s. 81 do not exclude the question of intention which is laid down in the English cases as the determining factor. ABDUL AZIZ BEPARI *v.* JOGENDRA KRISHNA RAY (1916) . . . **20 C. W. N. 1224**

——— s. 103—

See SALE OF GOODS.

L. R. 43 I. A. 164

——— ——— ——— *Transfer of Property Act (IV of 1882 as amended by Act II of 1900), s. 4 and 137—"Instrument of title" to goods—Railway receipt—Stoppage in transit—Assignment of railway receipt, effect of.* On this appeal their Lordships of the Judicial Committee (upholding the decision of the High Court in *Amerchand & Co.* v. *Ramdas Vithaldas Durbar, I. L. R. 38 Bom. 255*), *held* that the "railway receipt" in question in the case was an "instrument of title" within the meaning of s. 103 of the Contract Act (IX of 1872). RAMDAS VITHALDAS *v.* AMERCHAND & Co. (1916) **I. L. R. 40 Bom. 630**

——— ——— ss. 126, 140, 141, 145, 69, 70—

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), SS. 30, 47, 59, 74, 94.

I. L. R. 39 Mad. 965

CONTRACT ACT (IX OF 1872)—*contd.*

——— s. 139—*Discharge of surety by act of creditor detrimental to surety—Banker, deposit with—Banker must allow specific direction of depositor even if he be indebted—Debtor, specific appropriation by, to be observed by creditor.* The defendant's brother had an account at the plaintiff Bank which being considerably over-drawn the Bank called for additional security and the defendant gave a guarantee to the Bank agreeing to pay to them on a specified date to the extent of a specified amount all money then due to the Bank from his brother on current account or otherwise howsoever including all interest, charges and other expenses which the Bank might charge. After the date of payment mentioned in the agreement of guarantee and when there remained due to the Bank a large sum so guaranteed the defendant's brother opened a separate account with the Bank by depositing a certain amount on condition that the Bank would allow him to draw this sum by cheques and not take it in payment of the amount due to them on the guaranteed over-draft account, but that any profits of the business carried on by him with the money deposited on the second account would be paid to credit of the over-drawn account. The Bank did not inform the defendant of the opening of this new account and certain sums were transferred from this account to the previous over-drawn account purporting to be profits as aforesaid. After this second account came to an end the Bank claimed from the defendant payment of the balance on the over-drawn account and a copy of the account of the defendant's brother was supplied to the defendant showing the amount due to the Bank on account of principal and interest as also the second account opened by the defendant's brother. The defendant without disputing his liability assured payments of the money due from his brother. *Held*, that on the facts of the case the defendant was not discharged from his liability to the Bank in consequence of the arrangement made by the Bank with his brother in opening the second account. That the defendant was not entitled to have the account reopened and the Bank entitled to interest after the date mentioned in the agreement of guarantee for payment, at the rate usual on the account but not at any higher rate. *Per* SANDERSON C. J.—That in opening the second account the Bank did not act inconsistently with the right of the defendant as surety within the meaning of s. 139 of the Contract Act under which in order to discharge the surety it must be shown that not only has the creditor omitted to do some act which his duty to the surety required him to do but also that the eventual remedy of the surety himself has thereby been impaired, which was not shown to be the case here. That it was not within the power of the Bank to appropriate the amount in the second account to the previous over-drawn account inasmuch as the depositor deposited that amount on condition that he was allowed to draw against it. That the rule in *Clayton's Case, 1 Mer. 572*, applies only to the items in one current account and when there is no specific appropriation by the debtor; but in the present case there was a specific appropriation by the depositor when he opened the new account and there were in fact two accounts and not one and the rule in *Clayton's Case, 1 Mer. 572*, did not apply. That it was no duty of the Bank to communicate with the defendant with reference to the opening of the new account which was not contrary to the nature of the defendant's engagement but in accordance with the arrangement made by the defendant with the Bank. *Per* MOOKERJEE J.—That in the absence of special agreement a guarantor has no right to control the appropriation by Customer or Banker of moneys paid in subject to the qualification that the Banker is bound to deal with the accounts in the ordinary way of business. Any specific direction regarding the appropriation of a deposit must be observed by the Bank. In the present case the agreement between the Bank and the depositor made it impossible for the Bank to apply the deposit in reduction of the over-draft on the first account; consequently the fact that the deposit was not so applied did not justify the contention that the Bank were at fault and the surety must be deemed discharged; there was thus no room for the application of the rule in *Clayton's Case, 1 Mer. 572*. That the Bank did not fail in their duty to the defendant when they carried on transactions with his brother under the second account without any intimation to him. The true rule is that if there is any agreement between the principal with reference to the contract guaranteed, the surety ought to be consulted and that if there is any alteration which is not obviously either unsubstantial or for the benefit of the surety he is to be the sole judge whether he remains liable. This is substantially in accord with s. 139 of the Indian Contract Act. GHUZNAVI *v.* THE NATIONAL BANK OF INDIA LTD. (1916) . . . . 20 C. W. N. 562

——— s. 180—

See PARTNERSHIP. I. L. R. 43 Calc. 733

——— ss. 207, 253 cl. (*19*)—

See PRINCIPAL AND AGENT. I. L. R. 43 Calc. 248

CONTRACT C. I. F.

See SALE OF GOODS . I. L. R. 40 Bom. 11

CONTRACT TO LEND OR BORROW.

See SPECIFIC PERFORMANCE. I. L. R. 43 Calc. 59

CONTRIBUTION.

See MORTGAGE . I. L. R. 38 All. 92

——— cause of action for—

See LIMITATION I. L. R. 39 Mad. 288

——— suit for—

See CONTRACT ACT (IX OF 1872), SS. 69 AND 70 . I. L. R. 39 Mad. 795

CONTRIBUTION—*concld.*

———— suit for, between joint debtors—

See LIMITATION . . I. L. R. 39 Mad. 288

———— *Compromise—Claim by party to a compromise alleging payment by himself of money for payment of which he and others were jointly liable—Joint tort-feasors.* A Hindu widow, the owner of considerable property, brought a suit against her four brothers as managers of her estate for the profits of the estate to a considerable amount. One of the brothers had previously brought a suit against her for a declaration that she had adopted his son. These suits were compromised, and the compromise was made a decree of Court. Amongst the conditions of the compromise was one to the effect that the brothers should pay back a certain sum of money belonging to their sister's estate which had been collected and misappropriated by them. *Held*, on suit by one of the brothers who alleged that he had paid the whole sum and asked for contribution, that the rule laid down in *Merryweather* v. *Nixan, 8 T. R. 186*, that there was no right of contribution amongst joint tort-feasors did not apply to this case when the claim was based on the terms of a compromise, and *quære* whether the rule should be applied in India at all. *Plamer* v. *Wick and Pulteneytown Steam Shipping Company, Limited*, [*1894*] *A. C. 318*, referred to. NIHAL SINGH *v.* THE COLLECTOR OF BULANDSHAHR (1916) I. L. R. 38 All. 237

CONTRIBUTORY.

See COMPANIES ACT (VI OF 1882), ss. 53, 147 . I. L. R. 40 Bom. 134

See COMPANIES ACT (VI OF 1882), ss. 61, 125, 151 . I. L. R. 38 All. 347

CONVERSION.

———— of appeal into Civil Revision Petition—

See PROVINCIAL INSOLVANCY ACT (III OF 1907), s. 46, CL. (*3*). I. L. R. 39 Mad. 593

CONVERTS.

———— to Mahomedanism—

See SUCCESSION . L. R. 43 I. A. 35

———— to Roman Catholic religion—

See CHURCH . I. L. R. 39 Mad. 1056

CONVEYANCE.

See RECEIVER I. L. R. 43 Calc. 124

See VENDOR AND PURCHASER. I. L. R. 40 Bom. 69

CONVICTION.

See ABKĀRI ACT (MADRAS ACT I OF 1886), ss. 56, 64 . I. L. R. 39 Mad. 895

COPARCENER.

See HINDU LAW—GIFT. I. L. R. 39 Mad. 1029

See HINDU LAW—MAINTENANCE. I. L. R. 39 Mad. 396

COPARCENER—*concld.*

———— decree against a—

See HINDU LAW—COPARCENER. I. L. R. 40 Bom. 329

———— marriage of—

See HINDU LAW—PARTITION. I. L. R. 39 Mad. 587

COPY OF FORGED DOCUMENT.

———— filing of—

See FORGERY . I. L. R. 43 Calc. 783

COPYRIGHT.

———— *Preparation by a member of the Board of Studies, Allahabad University, of a list of graduated selection from different authors for certain examinations—Publication by the Syndicate of a syllabus containing, amongst other items, the selection already referred—Publication of same in book-form by a book-seller—Infringement of copyright.* *A*, a member of the Board of Studies of the Allahabad University, prepared at the request of the convener a list of graduated selections from standard Persian authors for the use of candidates for certain examination of the University. In preparing these lists he spent considerable labour, learning and skill. The Board of Studies, after due consideration, adopted with slight modifications the selections shown in the list as the subject for those examinations in Persian and published the lists for the information of the public generally and of the candidates concerned specially. Subsequently to this, *B*, a firm of publishers, compiled books from the original authors according to these lists. *Held*, that *A* had no copyright in the lists as by laying the result of his labours before the Board of Studies he placed the lists unreservedly at the disposal of the University authorities. MUHAMMAD ABDUL JALIL *v.* RAM DAYAL (1916) I. L. R. 38 All. 484

CORPORATION.

See SALE . I. L. R. 43 Calc. 790

———— suit against—

See PLAINT . I. L. R. 43 Calc. 441

CORRUPTION.

See OFFICIAL CORRUPTION.

COSTS.

See APPEAL I. L. R. 43 Calc. 857

See ATTORNEY'S LIEN FOR COSTS. I. L. R. 43 Calc. 932

See CONTRACT ACT (IX OF 1872) s. 47. I. L. R. 40 Bom. 517

See REMAND I. L. R. 43 Calc. 1104

See SECURITY FOR COSTS.

See SUMMONS, SERVICE OF. I. L. R. 43 Calc. 447

1. ———— *Principal and Agent—Costs between Principal and Agent in a suit*

COSTS—*contd.*

for account—Manager, liability of, for costs—Presidency Small Cause Courts Act (XV of 1882), s. 22—Practice. In the matter of costs, the Court's discretion is to be exercised with special reference to all the circumstances of the case including the conduct of parties. *Sheo Dayl Tewari Chowdhury* v. *Bishunath Tiwari Chowdhury, 9 W. R. 61,* referred to. If a person takes up the management of another's estate and collects and disburses moneys, he must be ready with his account; and if his failure to perform this obvious duty necessitates a suit, then he must pay the costs. *Collyer* v. *Dudley, 2 L. J. Ch. 15,* referred to. So, where a manager has deliberately set up a false defence, and on being ordered to render an account, submits a false account and suppresses important documents thereby hampering and prejudicing the inquiry, it is only right that he should pay the full costs of, and incidental to, the suit. *Ramgopaul Chatterjee* v. *Bhoban Mohan Banerjee, Coryton's Rep. 126,* and *Hurrinath Rai* v. *Krishna Kumar Bakhshi, I. L. R. 14 Calc. 147,* referred to. Because in a suit for an account, a sum of money less than rupees 1,000 was found due by the defendant, it does not follow that such a suit should have been instituted in the Presidency Small Cause Court, and that the provisions of s. 22 of the Presidency Small Cause Courts Act apply. SUKUMARI GHOSE *v.* GOPI MOHAN GOSWAMI (1915) . **I. L. R. 43 Calc. 190**

2. ———— *Solicitor's lien for costs—Minor—Next friend—Attorney's costs for proceedings undertaken on the next friend's instructions—Whether attorney is entitled to a charge on the minor's property for his costs so incurred—Practice.* Where a suit has been brought by a minor through his next friend for declaration of the infant's title to and possession of property, the attorney is entitled to have a charge declared on the properties for the amount of costs incurred by him and he is entitled to recover the same in a suit. *Shaw* v. *Neale, 6 H. L. C. 581, Baile* v. *Baile, L. R. 13 Eq. 497, Pritchard* v. *Roberts, L. R. 17 Eq. 222, In re Howarth, 8 Ch. App. 415, Helps* v. *Clayton, 17 C. B. (N. S.) 553, Ex parte Tweed, [1899] 2 Q. B. 167, Narendra Nath Sircar* v. *Kamalbasini Dasi, I. L. R. 23 Calc. 563, Devkabai* v. *Jefferson, Bhaishankar and Dinsha, I. L. R. 10 Bom. 248, Khetter Kristo Mitter* v. *Kally Prosunno Ghose, I. L. R. 25 Calc. 887, In re Wright's Trust, [1901] 1 Ch. 317, Watkins* v. *Dhunnoo Baboo, I. L. R. 7 Calc. 140, Sham Charan Mal* v. *Chowdhry Debya Singh Pahraj, I. L. R. 21 Calc. 872, Ispahani* v. *Chundi Charan Pal, 9 C. W. N.* cxcvii, and *Branson* v. *Appasami, I. L. R. 17 Mad. 257,* referred to. KUMAR KRISHNA DUTT *v.* HARI NARAIN GANGULY (1915) **I. L. R. 43 Calc. 676**

3. ———— *Taxation of costs—costs are awarded as an indemnity, and not as a penalty—Costs of the Secretary of State for India, to be taxed in the ordinary way—Profit costs of the Government Solicitor and brief fees to the Advocate-General, to be allowed on taxation—Application to review the certificate of the Taxing Master.* Where the Secretary of State for India is a party to a suit filed in the

COSTS—*concld.*

High Court in its Ordinary Original Civil Jurisdiction and costs are awarded to him, he is entitled to have his bill of costs taxed in the ordinary way, although the Government Solicitor and the Advocate-General employed on his behalf are paid fixed salaries for the conduct of all Crown cases. Hence, all profit costs of the Government Solicitor and brief fees to the Advocate-General should be allowed on taxation. NUSSERWANJI & Co. *v.* S. S. WARTENFELS (1916) . . **I. L. R. 40 Bom. 588**

4. ———— *Order of Appellate Court remanding a case—"Costs to abide the result," meaning of—Discretion of lower Court, if fettered—Costs to abide and follow the result and costs to follow the event, distinction between.* Where the High Court, in remanding a case to the lower Court, ordered that the costs should abide the result : *Held,* that the words " abide the result " only connote that the order as to costs is to await the passing of the final decision in the case, and have not the effect of fettering the discretion of the trying Judge. Distinction between " abide the result " and " abide and follow the result " or " follow the event " pointed out. PERIAH *v.* LAKSHMIDEVAMMA (1915) **I. L. R. 39 Mad. 476**

COUNCILLOR.

See BOMBAY DISTRICT MUNICIPALITIES ACT (Bom. Act III OF 1901), s. 42.
I. L. R. 40 Bom. 166

COURT.

———— **power of—**

See INTEREST . **I. L. R. 43 Calc. 632**

COURT-AUCTION.

See SUBSTITUTION OF PROPERTY AND SECURITY . **I. L. R. 39 Mad. 283**

COURT-FEE.

See COURT-FEES ACT.
See MADRAS CIVIL COURTS ACT (III OF 1873), ss. 12, 13.
I. L. R. 39 Mad. 447

COURT-FEES ACT (VII OF 1870).

———— **s. 7, cl. iv**—*Suit for accounts—Preliminary decree—Appeal by the defendant against the whole decree—Valuation.* In a suit coming under c. iv, s. 7 of the Court Fees Act, when the plaintiff has valued the relief prayed for and obtained a decree, in this instance ; a preliminary decree for an account, and the defendant appeals against the whole decree, he is bound by the valuation in the plaint. *Samiya Mavali* v. *Minammal, I. L. R. 23 Mad. 490,* approved and followed. *Delroos Banoo Begum* v. *Nawab Syud Ashgur Ally Khan, 15 B. L. R. 173* and *Bunwari Lal* v. *Daya Sunker Misser, 13 C. W. N. 815,* referred to. SRINIVASACHARLU *v.* PERINDEVAMMA (1915) . **I. L. R. 39 Mad. 725**

———— **s. 7, cl. v, sub-cl. XI (cc)**—*Court-Fees Amendment Act (VI of 1905)—Suit to recover immovable property from tenant—Value for jurisdiction and for court-fee, same—Madras Civil*

COURT-FEES ACT (VII OF 1870)—*contd.*

——— s. 7—*concld.*

Courts Act (III of 1873), s. 14—Suits Valuation Act (VII of 1887), s. 8. Although suits for recovery of immovable property from tenants have not been expressly withdrawn from the operation of s. 14 of the Madras Civil Courts Act (VII of 1887), the effect of the amendment of s. 7 of the Court Fees Act (VII of 1870) by adding to it clause (xi) (cc) is to bring such suits also under the operation of s. 8 of the Suits Valuation Act (VII of 1887) and not under s. 14 of the Madras Civil Courts Act; so that in the case of such suits the valuation for purposes of jurisdiction is the same as for court-fees. NARAYANASWAMI NAIDU *v.* SESHAGIRI ROW (1915) **I. L. R. 39 Mad. 873**

——— s. 7, cls. v, x—*Court-fee—Suit for specific performance of contract to sell and for possession.* The plaintiffs alleged that the defendants Nos. 2 and 3 having contracted to sell certain property to them and received part of the price, thereafter sold the same property to defendant No. 1, who had notice of the agreement with the plaintiffs, and they asked (i) that the defendants 2 and 3 might be compelled to complete the sale to the plaintiffs, and (ii) for possession of the property. *Held,* that the suit was really one for specific performance of a contract and the court fee thereon was assessable under s. 7, cl. X, of the Court Fees Act, 1870. *Mohi-ud-din Ahmad Khan v. Majlis Rai, I. L. R. 6 All. 231,* referred to. NIHAL SINGH *v.* SEWA RAM (1916) **I. L. R. 38 All. 292**

——— s. 7, cl. ix—

See MADRAS CIVIL COURTS ACT (III OF 1873), ss. 12, 13 **I. L. R. 39 Mad. 447**

——— s. 19C—

See PROBATE **I. L. R. 43 Calc. 625**

——— s. 19E—

See PENALTY **I. L. R. 43 Calc. 230**

——— Sch. I, Art. 11; Sch. III—*Estate of which gross value over Rs. 1,000, but deducting debts, net value less than that, if chargeable with death-duty.* The expression " amount or value of the property " in Art. 11 of Sch. I of the Court Fees Act signifies what is described as the " net total " in Annexure A in Sch. III, obtained by the deduction of the amount shown in Annexure B as not subject to duty from the gross valuation of the movable and immovable property left by the deceased. *Held,* therefore, that no fee was leviable under the article upon the estate of the deceased the gross value of which was shown to be Rs. 1,244-11-0, and the amount of the debts Rs. 522 leaving a net balance of Rs. 722-11-0. *Collector of Maldah* v. *Nerode Kamini, 17 C. W. N. 21,* not followed. *In the goods of Harriett Teviot Kerr, 18 C. W. N. 121: s. c. 18 C. L. J. 308,* referred to. *In the goods of* QUININGBOROUGH (1915) . **20 C. W. N. 591**

——— Sch. I, Arts. 11, 12—*Succession certificate—Grant to widow—Death of widow—Fresh certificate, application by daughter for—Court-fee if must be paid again—Analogy of administration de bonis non, if applies—Fiscal statute, interpretation of—Succession Certificate Act (VII of 1889), s. 14.* Whenever a fresh succession certificate is taken, even though it is to collect debts for which a succession certificate has already been taken out and the duty paid, the duty prescribed by the Court Fees Act must be paid. R, the widow of a deceased Hindu, took out a succession certificate in respect of certain debts due to the deceased. After her death, S, the daughter of the deceased, applied for a succession certificate in respect of the same debt and urged that stamp duty upon the debts having once been already paid by R, she was not bound to pay duty again: *Held,* that it was an application for a certificate within the meaning of s. 14 of the Succession Certificate Act, and Court-fee was payable on it as such. One fiscal Act cannot be construed by another fiscal Act. *In re* SAROJEBAHSHINI DEBI (1916) . . **20 C. W. N. 1125**

COURT-FEES ACT (VII OF 1870)—*concld.*

——— Sch. I—*concld.*

——— Sch. II, Art. 12—*Caveat, what is a—Probate proceeding—Persons upon whom citations issued, preferring objections—Objections if must be stamped as caveat.* A petition by which a party upon whom citation has been issued opposes the grant of probate is not a caveat and need not be stamped as such. A caveat, which is in the nature of a precautionary measure intended to assure that there shall be no proceeding in the matter of the estate of the deceased without notice to the person who files a caveat, is not necessary where persons interested in the estate of the deceased appear upon citation. BHABATARINI DEBI *v.* HARI CHARAN BANERJEE (1916) . . **20 C. W. N. 787**

——— Sch. II, Art. 17—*Value of suit under Judgment debtor's title disputed—Cancelling of attachment—Suits Valuation Act (VII of 1887) s. 4, valuation under.* Where the prayer in a plaint is not only to cancel an attachment but also for a declaration that the judgement-debtor has no interest in the property, the value of the suit is the value of the entire property claimed by the plaintiff. NARAYANAN SINGH *v.* AIYASAMI REDDI (1915) **I. L. R. 39 Mad. 602**

COURT-FEES AMENDMENT ACT (VI OF 1905)

See COURT-FEES ACT (VII OF 1870), S. 7, CL. (V), SUB-CL. XI (CC). **I. L. R. 39 Mad. 873**

COURT OF WARDS.

See LIMITATION **I. L. R. 43 Calc. 211**

See OUDH LAND REVENUE ACT (XVII OF 1876), SS. 173, 174. **I. L. R. 38 All. 271**

COURT OF WARDS ACT (BENG. IX OF 1879).

——— s. 6 (*a*)—*Debtor's widow made Ward of Court—Suit to recover debt from widow without making manager of Court party as her guardian, if maintainable, when whole estate not taken over.* Where

COURT OF WARDS ACT (BENG. IX OF 1879)—*concld.*

———— s. 6—*concld.*

the creditor of a deceased zemindar sued his widow who had been declared a disqualified proprietor under s. 6 (*a*) of Ben. Act IX of 1879 (Court of Wards Act) for recovery of the debt from the assets left by her husband, without describing her as a ward of the Court or as being represented by the manager of the Court of Wards as her guardian as required by s. 51 of the Act. *Held*, that the suit was badly framed even though it appeared that one of her husband's properties had not been taken over by the Court at the date of the suit, and was taken over only after the lower Court had passed a decree against the lady in the suit as framed. *Dhanipal Das* v. *Raja Maneshar Singh*, *L. R. 33 I. A. 118 : s. c. 10 C. W. N. 849*, *Dhunpat Singh* v. *Sucadra Kumari*, *I. L. R. 8 Calc. 610*, and *Krishna Prosad* v. *Gosta Behary*, *I. L. R. 28 Calc. 149 : s. c. 5 C. W. N. 443*, referred to. ANANDA KUMARI DEBI *v.* DURGA MOHAN CHUCKERBUTTY (1915) **20 C. W. N. 31**

———— ss. 11, 13A, 51, 55—*Estate retained by Court after some co-sharers ceased to be disqualified, on account of unpaid debts—Sale of property in execution—Application to set aside sale by judgment-debtors not acting through Court of Wards, if lies—Estate released pending appeal from order dismissing application—Effect.* Some properties of the judgment-debtors, whose estate was in charge of the Court of Wards, was sold in execution of a decree on 15th April 1912. As the Court of Wards would not apply to set aside the sale, the judgment-debtors themselves applied under s. 47 and O. XXI, r. 90 of the Civil Procedure Code. The application was rejected on 11th January 1913 and the judgment-debtors applied on 11th April 1913. The estate was released by the Court of Wards on the 18th June 1914, before the appeal was heard. One of the judgment-debtors, B, had ceased to be disqualified before the sale but as there were unpaid debts of the estate, the Court of Wards under s. 13A of the Court of Wards Act, was authorised to retain possession of the estate. *Held*, that under s. 55 of the Court of Wards Act the application to set aside the sale was incompetent. That the release of the estate did not give a fresh start to limitation, as the judgment-debtor B not being a minor at the time the right to apply accrued, was not entitled to claim the benefit of s. 7 of the Limitation Act. UMAKANTA SEN CHOWDHURY *v.* HIRA LAL RAY (1916) . . **20 C. W. N. 852**

———— s. 18—

See LIMITATION **I. L. R. 43 Calc. 211**

COURT OF WARDS ACT (BOM. I OF 1905).

———— ss. 31, 32—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 92.
I. L. R. 40 Bom. 541

COURT SALE.

———— validity of—

See DECREE AGAINST A MAJOR AS MINOR.
I. L. R. 39 Mad. 1031

COTTON GOODS.

———— sale and purchase of—

See CONTRACT ACT (IX OF 1872), s. 47.
I. L. R. 40 Bom. 517

COVENANTS.

———— in a mining lease—

See TENANTS-IN-COMMON.
I. L. R. 39 Mad. 1049

CRIMINAL APPEAL.

———— presentation of—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss. 421, 233, 537.
I. L. R. 39 Mad. 527

CRIMINAL INTENT.

See CRIMINAL TRESPASS.
I. L. R. 43 Calc. 1143

CRIMINAL PROCEDURE CODE (ACT V OF 1898).

———— ss. 4 (*h*), 195 (*1*) (*b*), 476—

See SANCTION FOR PROSECUTION.
I. L. R. 43 Calc. 1152

———— ss. 4, 199, 238 (3)—

See PENAL CODE (ACT XLV OF 1860) s. 498 . . **I. L. R. 38 All. 276**

———— ss. 4, 476—"*Complaint*"—*Statement made to Magistrate in his executive capacity—(Indian Penal Code), Act XLV of 1860, s. 211. Held*, that it was not competent to a Magistrate to treat as a complaint, and found thereon such procedure as would naturally follow on a complaint including a prosecution under s. 211 of the Indian Penal Code, a statement which was made to him extra-judicially and without any intention or desire that it should be taken as a complaint, but merely in reply to a question asked by the Magistrate. EMPEROR *v.* BHOLE SINGH (1915)
I. L. R. 38 All. 32

———— s. 35 (*1*)—*Sentences when may be ordered to run concurrently.* S. 35 (*1*), Criminal Procedure Code, authorises a Court to direct that several punishments passed on an accused for two or more distinct offences do run concurrently only when such sentences have been passed on him at one trial. It is not competent to a Court to give such a direction when the sentences have been passed in different trials. BEJOY GOPAL GHOSE *v.* KAMAL MANDAL (1916) . **20 C. W. N. 1300**

———— s. 88—*Absconding person, a member of an undivided Hindu family—Undivided interest of his in the family property, or any portion thereof whether liable to attachment under s. 88.* The undivided interest of an absconding person who is a member, of an undivided Hindu family in the family property or any portion thereof can be attached under s 88 of

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 88—*concld.*

the Criminal Procedure Code (Act V of 1898). *Mussamat Golab Koonwur* v. *The Collector of Benares and Raja Odit Narain Sing, 4 Moo. I. A. 246* and *Juggomohon Bukshee* v. *Roy Mothooranath Chowdry, 11 Moo. I. A. 223*, followed. *Re Umayan, 2 Weir's Cr. R. 43*, approved. *Re Chinniyan, 2 Weir's Cr. R. 43*, overruled. SECRETARY OF STATE FOR INDIA *v.* RANGASAMY AYYANGAR (1916) **I. L. R. 39 Mad. 831**

——— s. 106—

See SECURITY TO KEEP THE PEACE. **I. L. R. 43 Calc. 671**

——— s. 107—

See SECURITY TO KEEP THE PEACE. **I. L. R. 38 All. 468**

——— s. 108 (*b*)—

See SECURITY FOR GOOD BEHAVIOUR. **I. L. R. 43 Calc. 591**

——— s. 110—

See SECURITY FOR GOOD BEHAVIOUR. **I. L. R. 43 Calc. 153, 1128**

——— s. 110—*Security to be of good behaviour —Appeal—Judgment.* A Court of Appeal dismissing an appeal summarily is not bound to write a judgment; but an appeal from an order requiring a person to furnish security to be of good behaviour is distinguishable from an appeal against a conviction in respect of an offence specifically charged. And in such cases a District Magistrate should not dispose of an appeal otherwise than by judgment showing on the face of it that he has applied his mind to a consideration of the evidence on the record, and of the pleas raised by an appellant, both in the Court below and in his memorandum of appeal. EMPEROR *v.* LAL BEHARI (1916) **I. L. R. 38 All. 393**

——— ss. 110 and 167—*Proceedings under s. 110—Power to remand under s. 167.* In proceedings under s. 110 of the Code of Criminal Procedure (Act V of 1898), the Magistrate has no power to remand an accused person to custody. S. 167 of the Code applies to proceedings under Ch. XIV and not to those under s. 110. *Emperor* v. *Basya, 5 Bom. L. R. 27*, referred to. *Re* SUBBARAYA CHETTI (1915) . . **I. L. R. 39 Mad. 928**

——— s. 122—

See SURETY . **I. L. R. 43 Calc. 1024**

——— s. 133—*Reasonable opportunity to show cause—Order, if can be made on result of local inspection—Vague and indefinite order.* A proceeding under s. 133, Cr. P. C., is in the first instance entirely *ex parte* and the report or the other information whereon the Magistrate has taken action before making the conditional order is no evidence against the opposite party. It is consequently desirable that reasonable opportunity should be given to the opposite party to show cause as contemplated by s. 135, cl. (*b*), and to adduce evidence as prescribed

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 133—*concld.*

by s. 137 (*1*). An order under s. 133 cannot even by consent of parties be based upon information gathered at a local enquiry. When in a proceeding under s. 133, instituted against a number of persons, it is alleged that various unlawful obstructions have been caused upon a public way, it is essential that the order should state accurately, with regard to each person, the specific obstruction made by him, which he is required to remove, unless it is alleged that all the persons are jointly responsible for all the obstructions mentioned. *Kalimohan* v. *Nakari Chandra, 11 C. L. J. 114*, followed. RAI MOHAN KARMAKAR *v.* KING-EMPEROR (1916) . . **20 C. W. N. 1171**

——— s. 144—*Successive orders, propriety of—Revision by High Court of order under section after expiration of two months.* A Magistrate should not by successive orders under section 144, Criminal Procedure Code extend the period of two months prescribed by cl. (*5*) of the section. *Satish Chandra Ray* v. *Emperor, 11 C. W. N. 79*, referred to. Case in which the High Court set aside an order under s. 144, Criminal Procedure Code after the expiration of two months from the date of the order. BISHESHUR CHAKRAVARTY *v.* EMPEROR (1916) . . **20 C. W. N. 758**

——— s. 145—

1. ——— *Order under section contrary to decree of Civil Court.* The petitioners, the second party to the proceeding under s. 145, Criminal Procedure Code, obtained a decree against one of the first party and another person who were entitled to an undivided one-fourth share in the property in dispute. This share was sold in execution of the decree and purchase by the decree-holders, the petitioners, who obtained delivery of possession through the Court. The Magistrate finding that the petitioners were never in actual possession of the property and the crop was grown by the first party made an order in favour of the latter. *Held*, that the order was liable to be set aside. ATUL HAZRAH *v.* UMA CHARAN CHONGDAR (1916) . . . . . **20 C. W. N. 796**

2. ——— *Addition of parties—Sub-s. 4 (1)—Wrongful and forcible dispossession—Digging tank with sanction of Municipality —Party if must have had notice of the proceeding to be concerned in the dispute.* Where in a proceeding under s. 145, Criminal Procedure Code, it appeared that one of the parties within two months from the commencement of the proceeding obtained sanction from the Municipality and proceeded to dig a tank on the land in dispute to the exclusion of another party who was then found to be in possession: *Held*, that it was forcible and wrongful dispossession within the meaning of sub-s. *4*, cl. (*1*), of s. 145. *Held*, further, that under the Full Bench Ruling in *Krishna Kamini* v. *Abdul Jubbar I. L. R. 30 Calc. 155 : s. c. 6 C. W. N. 737*, a party may be added provided he was concerned originally in the dispute which was the foundation of the pro-

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 145**—*concld.*

ceeding and there is no necessity for a fresh proceeding. Further, if a party is added before the inquiry begins, there is no irregularity. That whether or not there was then an apprehension of a breach of the peace is a matter eminently for the exercise of the Magistrate's discretion. For a person to be concerned in a dispute relating to land, it is not necessary to be actually present near the land or to have had notice of the proceeding when started. MANMOTHA NATH CHATTERJI *v.* GANGA GIR GOSSAIN (1916) **20 C. W. N. 978**

3. ——— *Joint title to land, effect of, on the applicability of the section.* The mere fact that there may be a joint title to the land would not prevent the application of s. 145, Criminal Procedure Code. *Basanta Kumari Dassi* v. *Mohesh Chandra Saha, 17 C. W. N.* 944, followed. BAIJNATH MARWARI *v.* W. S. STREET (1916) . . . . . **20 C. W. N. 518**

——— **ss. 145, 146**—*Disputed land under water rendering act of possession by either party impossible—Order in favour of one party on the ground of his possession in the previous year—Substitution by High Court of order under s. 146 for order under s. 145.* Where in a proceeding under s. 145, Criminal Procedure Code, the Magistrate made the final order in favour of one party, finding that as there could not be any act of peaceful possession within two months of the date of the proceeding owing to the land being under water, the possession of the current year was to be presumed in favour of the man who was in possession during the previous years: *Held*, that the order was in direct contravention of s. 145, cl. (*4*), and the Magistrate should have passed an order under s. 146, Criminal Procedure Code. The High Court substituted an order under s. 146, Criminal Procedure Code, for the order under s. 145 made by the Magistrate. SATYENDRA NATH BANERJI *v.* KRISHNADHAN ADHECARY (1916) . **20 C. W. N. 1014**

——— **s. 146**—

Suit to determine rights of parties to order under, period of limitation for.—Suit, if lies against Magistrate. BROJENDRA KISHORE ROY CHOWDHRY *v.* SAROJINI RAY (1915) . . **20 C. W. N. 481**

——— **s. 164**—*Difference between statement and confession—Statement taken on affirmation, under s. 164 from a complainant, not a confession—Admissibility in evidence of statement, to prove perjury.* A complainant's sworn statement charging another with an offence was recorded by a Magistrate as a " statement " under s. 164 of the Criminal Procedure Code. *Held*, the fact that the statement happened also to amount indirectly to a confession of the complainant's own guilt of some other offence but not recorded as such by the Magistrate in accordance with the provisions of s. 364 of the Code, is no bar to its admissibility in evidence against the complainant on a charge of perjury. *Semble*: Whether a statement is to be regarded as a *confession* or not depends on the connection in which and the purpose for which it was made. A statement recorded as such cannot be used as a confession; nor a confession, as a statement. *Re* RAMANUJAMMA (1916) . **I. L. R. 39 Mad. 977**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 164**—*concld.*

——— **s. 164**—*Warrant for search of house—Resistance to police—Legality of warrant.* In the course of an investigation into a dacoity which had occurred in the Agra district a circle inspector of the Mainpuri district sent a sub-inspector to the circle inspector concerned with a suggestion that the house in which one Nihal Singh lived, in the Mainpuri district, might be searched. The Agra circle inspector thereupon gave, as he said, written instructions to the sub-inspector who had been sent to him from Mainpuri to the effect that, " the house of Nihal Singh be searched in connection with the dacoity at Nagla Murli, that he might be arrested for the sake of identification, and that the houses of those persons should also be searched who were suspected by the sub-inspector of receiving stolen property." Nihal Singh was not directly implicated by any one in the dacoity under investigation. When the police in pursuance of this order attempted to search the house where Nihal Singh was living, which belonged to Brikhbhan Singh his father-in-law, they were assaulted by Brikhbhan Singh and his relations and friends and prevented from conducting the search or arresting Nihal Singh. *Held*, that the authority under which the police had attempted to make the search was invalid and the persons resisting them could not be convicted under s. 332 of the Indian Penal Code. Whether or not these persons might have been found guilty under other sections of the Indian Penal Code, as, *e.g.*, ss. 107, 395 or 142, was discussed as a matter arising on the evidence in the case. EMPEROR *v.* BRIKHBHAN SINGH (1915) . . . **I. L. R. 38 All. 14**

——— **ss. 179 and 181**—*Complainant in Madras town, doing business in mofassil by agent—Agent's duty to remit principal's money to Madras—Misappropriation by agent in mofassil—Jurisdiction to try offences under Indian Penal Code (Act XLV of 1860), s. 406 or 409.* A firm in the town of Madras dealing in kerosine oil authorized an agent in a mofassil station to sell their oil and remit to them at Madras the sale proceeds less his commission. The agent sold the oil in the mofassil and without sending the proceeds misappropriated the same : *Held*, (*a*) that the proceeds were the property of the Madras firm, (*b*) that the case was governed by s. 181 and not s. 179 of the Criminal Procedure Code ; and (*c*) that as the misappropriation and consequent loss occurred to the Madras firm primarily only in the mofassil station, the Magistrate at that station and not the one in Madras had jurisdiction to try the offences under s. 406 or 409, Indian Penal Code. Cases on the subject reviewed. KRISHNAMACHARI *v.* SHAW WALLACE & Co. (1915) . **I. L. R. 39 Mad. 576**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 181, cl. (*d*)**—*Kidnapping committed outside British India—Jurisdiction of British Courts "when person kidnapped" detained within British India—Moyurbhunj not in British India.* A person charged with having committed the offence of kidnapping in Moyurbhunj which is outside British India, cannot be tried by a Court in British India within the local limits of which the person kidnapped may be conveyed or concealed or detained. BHUTA SANTAL *v.* DAMA SANTAL (1915) . . . . . **20 C. W. N. 62**

——— **ss. 192, 200 to 203, 476, 537**—

See FALSE INFORMATION.
I. L. R. 43 Calc. 173

——— **s. 195**—

See SANCTION FOR PROSECUTION.
I. L. R. 43 Calc. 597

1. ——— *False endorsement on a promissory note—Indian Penal Code (Act XLV 1860), s. 193. complaint under—Sanction—Necessity.* Where a complaint of false endorsement on a promissory note to prove a payment of Rs. 1,500 was preferred to a Second Class Magistrate but was transferred to a First Class Magistrate and where between the date of filing of the complaint and its transfer, a civil suit on the promissory note was filed: *Held*, that the sanction of the Civil Court under s. 195 (*1*) (*b*) was necessary before the Court could take action on the complaint. *Held*, also, that the date of the presentation of the complaint before a Magistrate having no jurisdiction to entertain it was not the date of the institution of the Criminal Proceedings. *Re* PARAMESWARAN NAMBUDRI (1915) . . **I. L. R. 39 Mad. 677**

2. ——— *Sanction, granting of under, to be made on legal evidence—S. 195 (b), High Cour hearing an appeal under—Judges divided equally in opinion—Whether an appeal lies under cl. 15 of the Letters Patent.* A Magistrate received a complaint of criminal breach of trust, examined the complainant on oath under s. 200, Criminal Procedure Code, but suspecting the complaint to be false referred it under s. 202, Criminal Procedure Code, to a Police Inspector for investigation and on receiving the report of the Inspector to the effect that the case was entirely false, dismissed the complaint under s. 203, Criminal Procedure Code. On an application being made for sanction to prosecute the complainant for preferring a false complaint, the Magistrate asked the complainant to show cause why sanction should not be given but as no witnesses were examined by him to show the truth of his complaint, the Magistrate granted sanction. *Held*, affirming the decision of SUNDARA AYYAR J., that the above materials did not constitute legal evidence for the Magistrate to grant the sanction and that hence the sanction given should be set aside. *Quœre*: Whether an appeal under c. 15 of the Letters Patent lies against an order of a Division Bench of the High Court when one of the Judges differs from his colleague on hearing an application under s. 195 (*b*), Criminal Procedure Code, to revoke a sanction granted by a lower Court. BAPU *v.* BAPU (1913)
I. L. R. 39 Mad. 768

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 195**—*concld.*

3. ——— *Sanction—Scope of section—Proceedings in relation to which sanction of Court necessary—Information to police followed by complaint in Court.* Where the information to the Police was followed by a complaint to the Court based on the same allegations and on the same charge as that contained in the information to the police and the complaint was investigated by the Court, sanction or a complaint of the Court itself under s. 195 (*b*), Criminal Procedure Code, would be necessary before the Court could take cognizance of an offence punishable under s. 211, Indian Penal Code, alleged to have been committed by making a false charge to the police, on the ground that it was an offence committed in relation to a proceeding in Court. BROWN *v.* ANANDA LAL MULLICK (1916) . . **20 C. W. N. 1347**

——— **s. 195 (*1*) (c)**—*Sanction to prosecute—Offence alleged to have been committed in respect of a document produced in a Civil Court by a party, but before the person producing it had become a party to any suit.* The words used in s. 195 (*1*) (*c*) "when such offence has been committed by a party to any proceeding in any Court" refer not to the date of the commission of the alleged offence, but to the date on which the cognizance of the Criminal Court is invited. Hence when once a document has been produced or given in evidence before a Court the sanction of that Court or of some other Court to which that Court is subordinate, is necessary before a party to the proceedings in which the document was produced or given in evidence can be prosecuted, notwithstanding that the offence alleged was committed before the document came into Court, at a time when the person complained against was not a party to any proceeding in Court. *Girdhari Merwari* v. *King-Emperor, 12 C. W. N. 822, King-Emperor* v. *Raja Mustafa Ali Khan, 8 Oudh Cases 313*, and *Emperor* v. *Lalta Prasad, I. L. R. 34 All. 654*, referred to. *Noor Mahomad Cassum* v. *Kaikhosru Maneckjee, 4 Bom. L. R. 268*, not followed. EMPEROR *v.* BHAWANI DASS (1915) . **I. L. R. 38 All. 169**

——— **s. 195 (*6*)**—

See SANCTION FOR PROSECUTION.
I. L. R. 39 Mad. 750

——— **ss. 222 (*2*) and 233**—*Penal Code, ss. 409 and 477A—Misjoinder of charges—Criminal breach of trust and falsification of accounts—Illegality.* An accused person was charged with and tried at the same trial for offences under s. 409 and s. 477A of the Indian Penal Code. In respect of the former offence he was charged with criminal breach of trust respecting a lump sum of money composed of numerous items. In respect of the latter offence

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 222—*concld.*

he was charged with suppressing a large number of documents showing the tender to him of sums of money by the persons liable to pay the same, and with putting false numbers on three of such documents. These documents (called *arzirsals*) related as well to other sums of money as to the sums which the accused was alleged to have embezzled. *Held*, that the principle of s. 222 (2) of the Code of Criminal Procedure could not apply to s. 477A of the Indian Penal Code, and that the framing of the charges against the accused in the manner described was an illegality which vitiated the trial. EMPEROR *v.* KALKA PRASAD (1915)
I. L. R. 38 All. 42

——— s. 234—

See JOINDER OF CASES.
I. L. R. 43 Calc. 13

——— *Misjoinder of charges.* Two accused persons were tried together on two charges, namely, theft, in a building (s. 380, Indian Penal Code) and theft of paddy in a field (s. 379, Indian Penal Code) committed on two different dates, the property in the building and the paddy belonging to one and the same complainant. *Held*, that there was a misjoinder of charges under s. 234, Criminal Procedure Code. RAHIMAN BIBI *v.* MABARAK MANDAL (1916) **20 C. W. N. 672**

——— ——— ss. 234, 239—

See JOINDER OF CASES.
I. L. R. 38 All. 457

——— s. 239—*Procedure—Joint trial—Thief and receiver triable together. Held*, that, in the absence of evidence clearly disassociating the act of receiving the stolen property from the theft thereof, the theft and the receipt of the stolen property may be considered as parts of the same transaction. It would not, therefore, be illegal to try thief and the receiver jointly. *Emperor* v. *Balabhai Hargovind, 6 Bom. L. R. 517*, followed. EMPEROR *v.* BHIMA (1916) **I. L. R. 38 All. 311**

——— s. 247—*Death of complainant—Application by the son of complainant to proceed with the case—Acquittal under s. 247, Criminal Procedure Code—Reference under s. 438, Criminal Procedure Code—Interference by High Court—Practice in case of acquittals.* On the application of the complainant in a case of rioting which ended in a conviction, proceedings under ss. 154, 155, Indian Penal Code, were instituted against the person in whose interest the riot had been committed. On the date fixed for hearing, the complainant's son appeared in Court, his father having died in the meantime, and asked to be allowed to go on with the case but the trying Magistrate acquitted the accused under s. 247, Criminal Procedure Code, being of opinion that he had no option in the matter : *Held*, that it is open to doubt whether s. 247, Criminal Procedure Code was intended to apply to a case like the present. The section seems to apply to the case of a complainant who is alive but does not appear.

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 247—*concld.*

That in any view the trying Magistrate should have proceeded with the case. That the practice of the High Courts has always been to refuse to interfere in revision with acquittals except for special reasons ; but in the present case which was one of considerable importance involving the peace of the district and in which the Magistrate had not exercised his discretion and given reasons for refusing to go on with the case, the order of acquittal should be set aside. DAMOO SAHU *v.* JITAN DUSADH (1916) . . **20 C. W. N. 862**

——— ss. 248, 345—*Wrongful confinement case—Petition filed by the complainant praying that the case may be struck off without hearing—Such petition, whether compromise or withdrawal—Procedure in warrant cases for withdrawal—Meaning of "compromise and withdrawal."* "Compromise" is a word which in itself contemplates an arrangement to which there are two parties. "Withdrawal" has no such meaning. A case is compromised if with the consent of the accused it is withdrawn. A case is withdrawn under s. 248, Criminal Procedure Code, without the consent of the accused. When a petition is filed by the complainant praying for striking off the case, it is clearly open to the Magistrate to satisfy himself under what section the petition is before him. Where the answers of the complainant clearly indicate that the case had not been compromised but was being withdrawn without the consent of the accused and the subsequent action of the accused shows that he had never consented to the compromise of the case : *Held*, that the petition was not a petition made under s. 345, Criminal Procedure Code and that the subsequent proceedings resulting in the trial and conviction of the accused were in order. *Murray* v. *Queen-Empress, I. L. R. 21 Calc. 103, Abdool Biswas* v. *Khater Mondal, 3 C. W. N. 332*, and *In re Ganesh Narayan Sathe, I. L. R. 13 Bom. 600*, referred to. BAYAN ALI *v.* KING-EMPEROR (1916)
20 C. W. N. 1209

——— ss. 253, 259—*Warrant case—Discharge of accused for absence of complainant.* In a warrant case an order discharging an accused person on account of the absence of the complainant cannot be made under s. 253, Criminal Procedure Code. Such an order can only be made under s. 259 and in a case where the offence may be lawfully compounded. ALEXANDER *v.* CONNORS (1916)
20 C. W. N. 698

——— s. 256—*Summons-case and Warrant case, trial of—Procedure, that of Warrant-case—Warrant-case, withdrawn—Charge framed in summons-case—Right of accused to recall and cross-examine prosecution witnesses—Magistrate, refusal of, illegal—Prejudice—Onus on prosecution.* When a summons-case and warrant-case are tried together, the procedure to be followed is that prescribed for the warrant-case. *Rajnarayan Koonwar* v. *Lala Tamoli Raut, I. L. R. 11 Calc. 91*, followed. If the complaint in respect of the offence triable as

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 256—*concld.*

a warrant-case is not proceeded with, but a charge qe framed only in respect of the offence triable as a summons-case, the accused is entitled to recall and cross-examine the prosecution witnesses under s. 256 of the Code of Criminal Procedure, as he could not have anticipated the withdrawal of the former charge and could not be said to have been in default. A refusal of the Magistrate to allow the accused to recall and cross-examine the prosecution witnesses is illegal, and it is for the prosecution to show that the accused are not prejudiced thereby. *Re* SOBHANADRI (1915)

I. L. R. 39 Mad. 503

——— s. 260, cl. (*1*)—*Bengal Tenancy Act (VIII of 1885), s. 71—Paddy cut and carried away by landlord from tenant's land, value of, for summary trial for theft.* Since a tenant is entitled to the exclusive possession of the whole produce until it is divided under s. 71 of the Bengal Tenancy Act, his complaint against landlord for theft for having cut and carried away paddy worth Rs. 88 of which the latter was only entitled to one half, cannot be summarily tried by a Magistrate as the value of the property in this case must be regarded as Rs. 88 and not Rs. 44 only. HABOO *v.* SHEIKH KARIMAN (1916) . . . . **20 C. W. N. 1212**

——— s. 287—

See PRACTICE . **I. L. R. 40 Bom. 220**

——— ss. 289, 292—

See RIGHT OF REPLY.

I. L. R. 43 Calc. 426

——— s. 341—*Deaf and dumb accused—Procedure and practice.* Though great caution and dilligence are necessary in the trial of a deaf and dumb person, yet if it be shown that such person had sufficient intelligence to understand the character of his criminal act, he is liable to punishment. EMPEROR *v.* A DEAF AND DUMB ACCUSED (1916)

I. L. R. 40 Bom. 598

——— s. 342—*Right of the Magistrate or Sessions Judge to put questions or take statements from accused when no evidence given by prosecution to implicate them—Answers taken from accused in contravention of s. 342, not admissible in evidence.* If in a criminal case the prosecution had not let in any evidence implicating the accused or some of the accused in the crime charged, the Magistrate is not entitled under s. 342 of Criminal Procedure Code to put questions to such accused or to invite them to make a statement ; and this rule equally applies to trials before the Sessions Court. Answers to questions received by the committing Magistrate in contravention of s. 342 of the Criminal Procedure Code are not admissible in evidence against the accused in the subsequent trial before the Sessions Court. *Mohideen Abdul Kader* v. *Emperor, I. L. R. 27 Mad. 238* and *Reg.* v. *Berriman, 6 Cox. Cr. C. 388*, followed. *Re* ABIBULLA RAVUTHAN (1915)

I. L. R. 39 Mad. 770

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 345—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 439.

I. L. R. 39 Mad. 604

——— *Compounding an offence—Complainant resiling before hearing, effect of. Per* ABDUR RAHIM J. (AYLING J., *dubitante*).—A composition arrived at between the parties of a compoundable offence is complete as soon as it is made ; and it has the effect of an acquittal of the accused under s. 345, Criminal Procedure Code, in respect of that offence, though one of the parties, later on, resiles from the compromise and no statement or petition recording the compromise is filed in Court by the parties. *Murray* v. *Queen-Empress, I. L. R. 21 Calc. 103*, referred to. KANNI ROWTHER *v.* INAYATHALLA SAHIB (1915)

I. L. R. 39 Mad. 946

——— ss. 345 (*5*), 423 (*1*) (*d*), 439—

See CRIMINAL TRESPASS.

I. L. R. 43 Calc. 1143

——— s. 369—*Review of judgment—Power of High Court to review its own order on the criminal side—Rules of Court, Chapter VII, r. 8—Finality of order. Held,* that the High Court has no power to review an order dismissing an application for revision made by an accused person. *In the matter of the petition of F. W. Gibbons, I. L. R. 14 Calc. 42*, and *Queen-Empress* v. *Durga Charan, I. L. R. 7 All. 672*, followed. But so long as an order is not sealed as required by the Chapter VII, r. 8 of the Rules of Court, it is not final, and it is open to the Judge who passed it to alter it. *Queen-Empress* v. *Lalit Tiwari, I. L. R. 21 All. 177*, and *Emperor* v. *Kallu, I. L. R. 27 All. 92*, followed. EMPEROR *v.* GOBIND SAHAI (1915)

I. L. R. 38 All. 134

——— s. 403—*Previous acquittal—Subsequent trial how far barred—Penal Code (Act XLV of 1860), ss. 467, 109, 471.* The accused was tried before a Court of Session for abetment of forgery in relation to a document under ss. 467 and 109 of the Indian Penal Code ; and was acquitted. He was again tried before the Court of Session for using as genuine the same forged document, under s. 471 of the Indian Penal Code. It was objected that the previous acquittal was a bar to the second trial under s. 403 of the Criminal Procedure Code. *Held,* overruling the contention, that sub-s. *1* of s. 403 of the Criminal Procedure Code did not apply to the case, inasmuch as the case was not one contemplated by s. 236, that is to say, a case where, upon the facts proved, it was doubtful what should be the true view of the offence constituted. *Held,* further, that the case fell under sub-cl. (*2*) of s. 403, for the series of acts beginning with the forgery and ending with the user of the forged document in the Civil Court to support the civil claim must be regarded as so connected together as to form the same transaction, or carrying through of a single predetermined plan, so that under s. 235 (*1*) it

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 403**—*concld.*

would have been competent to try the accused for both offences at the same trial. *Held*, also, that the case fell under sub-s. 4 of s. 403, because the Court which acquitted the prisoner on the charge of abetment of forgery was not competent to try the offence under s. 471 of the Indian Penal Code, inasmuch as at the time of the earlier trial no sanction for the prosecution under s. 471 had been given under s. 195 of the Criminal Procedure Code. EMPEROR *v.* JIVRAM DANKARJI (1915).

I. L. R. 40 Bom. 97

——— **ss. 408, 413**—*One of several co-accused in the same trial sentenced to one month's imprisonment, others to a longer period—Appeal.* *Held*, that the right of appeal exercisable by a person who has received an appealable sentence carries with it a right of appeal also by any other person convicted at the same trial, even though that particular person may have received a sentence which, if it stood alone, would not have been appealable. EMPEROR *v.* LAL SINGH (1916)

I. L. R. 38 All. 395

——— **s. 417**—*Appeal from an acquittal—Distinction, if any, between such appeal and appeal from conviction with regard to consideration of evidence—General rule applicable to criminal cases—Appellate Court's duty to give due weight to decision of lower Court.* An appeal from an acquittal does not stand on a different footing with regard to the consideration of evidence to an appeal from a conviction. No distinction is drawn in the Code of Criminal Procedure between an appeal from an acquittal and an appeal from a conviction. There are no special rules for dealing with the evidence in an appeal from an acquittal which, it is expressly provided in the Code, may lie on a question of fact. Due weight must of course be given to the decision of the Court below and the reasons advanced for that decision. Only one board rule can be laid down with regard to the consideration of evidence in all criminal cases and that is that the innocence of the accused person must be presumed and the burden lies upon the prosecution of completely rebutting that presumption. If after the consideration of the whole evidence any doubt is felt by the Court as to the guilt of any accused person he is entitled to the benefit of that doubt and the verdict must be in his favour. DEPUTY LEGAL REMEMBRANCER, BIHAR AND ORISSA *v.* MATUKDHARI SINGH (1915). **20 C. W. N. 128**

——— **ss. 421, 233, 537**—*Criminal appeal—presentation of, to an officer of the Court, or to one of the Judges—Appellate Side Rules, R. 1 (1) (f)—Divisional Court for the disposal of criminal business, powers of, to admit criminal appeals, when Admission Court is sitting—Notes to the Weekly Sitting List—Charter Act (24 & 25 Vict., Cap. 104), ss. 13 and 14.—Joint trial of two separate calendar cases—Offences distinct—Illegality, not cured by s. 537, Criminal Procedure Code—Retrial, if acquittal wrong.* When a case of acquittal taken up by the

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 421**—*contd.*

High Court in the exercise of its powers of revision was under the consideration of a Bench, notice was issued to the Public Prosecutor to appear at the further hearing of the revision and also to inform the Court whether Government intended to appeal against the acquittal. He appeared and handed in the appeals by the Government to the learned Judges who perused them and ordered notice forthwith. On that date an Admission Court constituted by a single Judge was sitting: *Held*, that there was a valid presentation of the appeals. The fact that a single Judge sitting in the Admission Court is entrusted with the duty of admitting criminal appeals does not deprive the Divisional Court constituted for the disposal of criminal business of the right to exercise its power of admitting criminal appea ls. It is by reference to the rules made by the High Court that the respective powers of Judges sitting alone and of Divisional Courts must be ascertained and not by reference to the notes to the "Sittings List" which are merely instructions for the guidance of practitioners. Under s. 13 of the Charter Act rules for the exercise of the High Court's appellate jurisdiction by one or more Judges or by Divisional Courts can be made only by such High Court, the powers of the Chief Justice being only those conferred by s. 14 to determine which Judge shall sit alone and which in Divisional Courts. *Per* OLDFIELD, J. As regards presentation, no special method is enjoined in the Code of Criminal Procedure; and therefore the question is one of administrative convenience alone. So long as there is an actual presentation to an officer of the Court such as a Bench Clerk or to one of the Judges, its members, the presentation is not invalid. Where, on the presentation of a single complaint against the accused containing all the allegations necessary for the establishment of two cases, those allegations being shortly that accused had cheated the Bank of Madras in connection with certain bills of exchange and also by a false representation contained in a document as to the amount of his assets, the Magistrate after recording the prosecution evidence continuously without discriminating between that which was relevant on each of these two charges, framed separate charges and also numbered them as different calendar cases, but when the witnesses came to be cross-examined, he lost sight of the necessity for keeping the two trials separate and allowed the witnesses to be cross-examined promiscuously in respect of both the charges. *Held*, that the joint trial of the two cases was illegal inasmuch as it contravened the provisions of s. 233, Criminal Procedure Code, and that the illegality could not be cured by s. 537, Criminal Procedure Code. *Subramania Ayyar* v. *King Emperor, I. L. R. 25 Mad. 61*, followed. Where in an appeal preferred by the High Court against the acquittal of an accused after an illegal trial, the Court is of opinion that the acquittal is wrong on the merits, the accused cannot be convicted and sentenced by the

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 421**—*concld.*

High Court; the only course open is to order that the accused be tried a second time. *Per* NAPIER J. —The decision of the Privy Council in *Subramania Ayyar* v. *King Emperor, I. L. R. 25 Mad. 61*, does not compel the Court to hold that in no case can a misjoinder of charges or a failure to try charges separately be an irregularity within the meaning of s. 537, Criminal Procedure Code. THE PUBLIC PROSECUTOR *v.* KADIRI KOYA (1915)
I. L. R. 39 Mad. 527

——— **ss. 424, 367**—*Appellate judgment, what should be.* The petitioners were convicted all under ss. 147 and 342, Indian Penal Code, and some also under s. 354 and some under s. 458, Indian Penal Code; the convictions were affirmed in appeal by the Sessions Judge. *Held*, that there ought to be sufficient materials in the appellate judgment itself to enable the High Court to form a conclusion as to the propriety of the conviction of each of the accused having regard to the various offences with which he was charged, and to enable it to come to a conclusion as to the correctness of the sentence which has been passed upon each of the accused having regard to the nature of the offence with which each of the accused was charged. The High Court directed a rehearing of the appeal by the same Sessions Judge. ARINDRA RAJBUNSHI *v.* KING EMPEROR (1916)
20 C. W. N. 1296

——— **ss. 429, 439**—

See SANCTION FOR PROSECUTION.
I. L. R. 39 Mad. 750

s. 432—*Reference under—Indian Electricity Act (IX of 1910), s. 33, scope of—"Every person," meaning of.* The words "every person" in s. 33 of the Indian Electricity Act is not confined to persons licensed under Parts II and III of the Act. S. 33 of the Act is not confined to cases in which the accident actually results in personal injury or death but also extends to cases likely to have resulted in loss of life or personal injury. *Re* HAWKINS (1915) . **I. L. R. 39 Mad. 686**

——— **s. 435**—

See PRESS ACT (I OF 1910), s. 3 (*1*), PROVISO . . **I. L. R. 39 Mad. 1164**

——— **ss. 435, 436**—*Commitment to the Court of Sessions by the High Court in revision—Indian Arms Act, ss. 19F, 20.* Where in a case proceeded with under s. 19F, the evidence recorded by the Magistrate disclosed an offence under s. 20 of the Arms Act, the High Court directed the commitment of the case to the Court of Sessions. NISHI KANTA LAHIRI *v.* THE CROWN (1916)
20 C. W. N. 732

——— **ss. 435, 439**—*Charter Act (24 & 25 Vict., cap. 104), s. 15—High Court, powers of, to revise—Complaint of offences under Indian Penal Code (Act XLV of 1860), ss. 189 and 504—Charges framed—Prosecution evidence unreliable—Offences not made out—Prosecution not bonâ fide—Interlocutory order—Process server's right to enter any house to effect service.* A complaint was preferred against the accused in respect of offences under ss. 189 and 504, Indian Penal Code, and charges were framed under the said sections by a second class sub-magistrate. A criminal revision petition was filed by the accused in the High Court to quash the proceedings on the ground that the evidence on record was insufficient to substantiate either of the charges and that the proceedings were instituted out of pure malice and with the object of harassing the petitioner. A preliminary objection was taken as to the maintainability of the petition and the powers of the High Court to interfere in revision. *Held*, that though the power of revision has to be exercised with great care the High Court has jurisdiction to interfere at any stage of the proceedings, if it considers that in the interest of justice it should do so. *Held* (on the fact of the case), that the case was a fit one for interference in revision, as a careful consideration of evidence of the prosecution led to the conclusion (*i*) that the ingredients necessary to constitute an offence under ss. 189 and 504, Indian Penal Code, had not been made out and (*ii*) that the case as presented to the Court bore considerable evidence of fabrication and that the development of the case in the later stages showed that it was not a case of *bonâ fide* prosecution but that the complainant was a tool in the hands of others. For an offence under s. 504 of the Indian Penal Code, mere abuse will not do without an intention to cause a breach of the peace or knowledge that a breach of the peace is likely. The fact of a process server being entrusted with a subpœna to serve a witness described as residing in a particular house does not give him a general right of entry into any house without the permission of the owner or person in charge. *Re* KUPPUSWAMI AYAR (1915)
I. L. R. 39 Mad. 561

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 435**—*concld.*

——— **ss. 435, 439, 133**—*Revision petition to the High Court against an order under s. 133—Order of a single Judge of the High Court—Appeal against order, if maintainable—Letters Patent (24 & 25 Vict., cap. 104, cl. 15).* No appeal lies, under cl. 15 of the Letters Patent, against an order of a single Judge of the High Court in a Criminal Revision Petition preferred against an order of a Magistrate acting under s. 133 of the Code of Criminal Procedure. SUBBAYYA *v.* RAMAYYA (1915) . . . **I. L. R. 39 Mad. 537**

——— **s. 439**—

1. ——— *Criminal Revision under—Compounding of offences—Incompetency of High Court to sanction composition, in Revision—Criminal Procedure Code (Act V of 1898), s. 345, Exhaustive.* The High Court sitting as a Court of Revision has no power to sanction the compounding of offences mentioned in s. 345, Criminal Procedure Code, which is exhaustive of the Courts which can sanction the composition of offences and the stages

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 439**—*concld.*

at which the composition can be effected. *Emperor v. Ram Piyari, I. L. R. 32 All. 153*, dissented from. *Re* RANGAYYA (1915) **I. L. R. 39 Mad. 604**

2. ——— *Presidency Magistrate, order of discharge by—Revision by High Court.* The High Court has power under s. 439 read with s. 423 of the Criminal Procedure Code to revise an order of discharge passed by a Presidency Magistrate and to direct a further enquiry if there are good reasons for doing so although no question of jurisdiction arises in the case. Where N, one of several accused persons, was discharged by the Magistrate under s. 253, Criminal Procedure Code, and the High Court at the hearing of the appeal of the other accused persons who were convicted by the Magistrate directed that the evidence of N should be recorded and in disposing of the appeal took into consideration the evidence so recorded and being of opinion that that evidence could not in some respects be accepted, issued a rule to show cause why the order of discharge should not be set aside: *Held*, that the mere fact that N was called upon to give his evidence in the case did not convert the order of discharge into one of acquittal and did not deprive the High Court of its revisional jurisdiction. That in the circumstances of the case the High Court should not set aside the order of discharge inasmuch as the evidence of N which was recorded under orders of the High Court and which was used by that Court for the purpose of coming to the conclusion as to the guilt of the other accused might afford material to the prosecution to support or frame the charge against N and to allow this would be contrary to the traditions of justice in criminal cases. KING-EMPEROR *v.* NANDA GOPAL ROY (1916) . **20 C. W. N. 1128**

——— **ss. 439, 422, 423**—*Order of acquittal. Revision petition to the High Court by private parties—Power of High Court to interfere—Interference, in what cases—Service of notice of appeal on District Magistrate—Omission of service, effect of—Irregularity.* The High Court has power to interfere in revision against an order of acquittal on the application of private parties, but will do so only when it considers that interference is urgently demanded in the interest of public justice. The High Court will not interfere with an order of acquittal where the question is one as to the appreciation of evidence or where there is no patent error or defect in the order which has resulted in grave injustice. Mere omission to serve notice of appeal on the District Magistrate, under ss. 422 and 423 of the Code of Criminal Procedure, is only an irregularity and will not render the proceedings *ab initio* void. VELLAYANAMBALAM *v.* SOLAI SERVAI (1915) **I. L. R. 39 Mad. 505**

See PERJURY . **I. L. R. 43 Calc. 542**

——— **s. 476**—

See MADRAS ESTATES LAND ACT (I OF 1908), ss. 164—167. **I. L. R. 39 Mad. 414**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 476**—*concld.*

1. ——— *Practice—Order for prosecution for perjury—Court bound to set out assignments of perjury alleged—Civil Procedure Code, 1908, s. 115—Revision—Material irregularity. Held*, that when a Civil Court makes an order under s. 476 directing that a person should be prosecuted for perjury such Court is bound to set forth in its order the specific assignments of perjury alleged against the accused. Failure to do so is a material irregularity within the meaning of s. 115 of the Code of Civil Procedure. EMPEROR *v.* KASHI SHUKUL (1916) . **I. L. R. 38 All. 695**

2. ——— Stay of criminal proceeding, pending appeal in matter out of which they arise. DEBI MAHTO *v.* KING-EMPEROR (1916) . . . **20 C. W. N. 1116**

——— **s. 488**—

1. ——— *Maintenance—Criminal revision petition to the High Court—Order of a single Judge—Appeal against, if maintainable—Letters Patent, cl. 15—Criminal trial, order in.* No appeal lies under *cl.* 15 of the Letters Patent against an order of a single Judge of the High Court dismissing a criminal revision petition filed against an order of a Joint-Magistrate passed under s. 488 of the Code of Criminal Procedure (Act V of 1898). APPADU *v.* APPAMA (1915) **I. L. R. 39 Mad. 472**

2. ——— *"Unable to maintain itself," meaning of—Child entitled to maintenance from its mother's tavazi not entitled to order for maintenance from father.* A child that possesses a right to maintenance from its mother's tavazi is not entitled under s. 488, Criminal Procedure Code (Act V of 1898), to an order for maintenance against its father. *Kariyadan Pokkar* v. *Kayat Beeran Kutti, I. L. R. 19 Mad. 461*, followed. *In re Parathy Valappal Moideen* (1913). *Mad. W. N. 997*, not followed. The words "unable to maintain" in s. 488 are not confined to physical inability but include also pecuniary inability. CHANTAN *v.* MATHU (1915) . . . . **I. L. R. 39 Mad. 957**

——— **s. 491**—*Directions of the nature of a habeas corpus—Application to be made to Judge on the Original Side of the High Court—S. 54, scope of—Circumstances justifying arrest—"Credible information" and "reasonable suspicion," meaning of.* An application under s. 491, Criminal Procedure Code, is to be made to the High Court in its Ordinary Original Criminal Jurisdiction. The petitioner who was the managing agent of a certain Provident Company of Calcutta was arrested by the Calcutta Police under s. 54, Criminal Procedure Code, on receipt of a letter written by an Inspector of Police in a certain district in the Bombay Presidency to the Commissioner of Police, Calcutta, in which it was stated that on enquiries into complaints against the Company and their local agent in Bombay it appeared, there being *prima facie* evidence to that effect, that the managing agent

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 491**—*concld.*

and the local agent committed offences under ss. 409, 420, Indian Penal Code. The letter contained a request to cause the arrest of the petitioner and was forwarded by the District Magistrate with a note that the petitioner might be arrested under s. 54, Criminal Procedure Code, and sent to the Magistrate, 1st class, of the District, to be tried by him. It was admitted that the officer effecting the arrest in Calcutta relied solely on the aforesaid letter and had no personal knowledge of the facts of the case: *Held*, that the arrest of the petitioner under s. 54, Criminal Procedure Code, was not proper. That s. 54, Criminal Procedure Code, gives wide powers to a police-officer to make an arrest without an order from a Magistrate and without a warrant only in certain circumstances limited by the provisions contained in the section, and it is necessary in exercising such large powers to be cautious and circumspect. The section gives a police-officer personal authority and involves personal responsibility, and the "reasonable suspicion" and "credible information" must be based upon definite facts which the police-officer must consider for himself before he acts under the section. He cannot delegate his discretion or take shelter under the belief or judgment of another police-officer. In the circumstances of the case the High Court under s. 491, Criminal Procedure Code, directed the release of the petitioner. *In the matter of* CHARU CHANDRA MAJUMDAR (1916) . . **20 C. W. N. 1233**

——— **s. 512**—*Evidence taken against an accused person who has absconded—Condition precedent to the use of such evidence against accused when arrested.* Evidence purporting to have been recorded under the provisions of s. 512 of the Code of Criminal Procedure cannot be used against the person concerning whom it was taken, unless it can be shown that before such evidence was recorded it was proved to the satisfaction of the Court that the accused had absconded and that there was no immediate prospect of arresting him. EMPEROR *v.* RUSTAM (1915) . **I. L. R. 38 All. 29**

——— **s. 517**—*Order as regards disposal of property—Discretion in making orders to be judicially exercised—Currency note—Property passes by delivery.* The accused stole a currency note, which he offered to a goldsmith as price for gold ornaments purchased by him. The goldsmith not having had sufficient cash, got the note cashed by a neighbouring shop-keeper (applicant), who cashed it in good faith. At the trial of the accused, the note was attached from the applicant. The accused was convicted of criminal breach of trust of the currency note which belonged to Government; and the note was ordered to be delivered to the Crown. The applicant having applied: *Held*, that as property in a currency note passed by mere delivery, the applicant had obtained a good title to the note notwithstanding that the accused had no title. *The Collector of Salem*, 7 *Mad. H. C. R. 233*, and *Empress* v. *Joggessur Mochi*. *I. L. R. 3 Calc. 379*, followed. Orders under s. 517 of the Criminal Procedure Code (Act V of 1898) are discretionary, but the discretion is open to correction where it has been exercised in violation of accepted judicial principles. *In re* PANDHARINATH PUNDLIK (1915) **I. L. R. 40 Bom. 186**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*concld.*

——— **s. 517**—*concld.*

——— **ss. 523, 524**—

See RIGHT OF SUIT. . **I. L. R. 40 Bom. 200**

——— **s. 530**—

See EUROPEAN BRITISH SUBJECT. **I. L. R. 39 Mad. 942**

CRIMINAL REVISION.

——— *Practice—Time-limit of applications to High Court in criminal revision—Application made after the expiry of 60 days from the date of the order.* As a matter of practice the High Court will not, save in exceptional circumstances, entertain an application in criminal revision unless it is made within sixty days, excluding the time necessary to obtain copies, from the date of the order complained of. *In the matter of* KHETRA MOHAN GIRI (1916). **I. L. R. 43 Calc. 1029**

CRIMINAL SESSIONS, HIGH COURT.

See PERJURY . **I. L. R. 43 Calc. 542**

CRIMINAL TRESPASS.

——— *High Court, power of, to allow composition of an offence on revision—Criminal Procedure Code (Act V of 1898), ss. 345 (5), 23 (1) (d), 439—Necessity of Criminal intent—Entry on land under bonâ fide claim of right—Penal Code (Act XLV of 1860), ss. 441, 447.* The High Court has no power, as a Court of Revision, under s. 439 read with s. 423 (*1*) (*d*), to sanction the composition of an offence when entered into after the conviction of the accused. *Adhar Chandra Dey* v. *Subodh Chandra Ghosh*, *18 C. W. N. 1212*, *Sankar Rangayya v. Sankar Ramayya*, *16 Cr. L. J. 750*; *29 Mad. L. J. 521*, and *Emperor* v. *Ram Chandra*, *I. L. R. 37 All. 127*, followed. *Emperor* v. *Ram Piyari*, *I. L. R. 32 All. 153*, *Naqi Ahmad* v. *King-Emperor*. *11 All. L. J. 13*, *Nidhan Singh* v. *King-Emperor*, *1 Cr. L. J. 509*; *5 Punj. L. R. 252*, *Ram Sarup* v. *Emperor*, *11 Cr. L. J. 496*; *13 O. C. 161*, and *Lall* v. *Emperor*, *15 Cr. L. J. 567*; *17 O. C. 92*, dissented from. *Abadi Begum* v. *Ali Husen*, (*1897*) *All. W. N. 26*, distinguished. To sustain a conviction under s. 447 of the Penal Code, it is necessary to prove not only entry on land in the possession of the complainant but also one of the intents specified in s. 441. Where a person was charged under ss. 447 and 504 of the Penal Code and convicted only under the former: *Held*, that the intent to commit an offence or to intimidate, insult or annoy not having been established, the conviction was bad. If a person enters upon land in the possession of another, in the exercise of a *bonâ fide* claim

CRIMINAL TRESPASS—*concld.*

of right without any such intent, he cannot be convicted under s. 447, though he may have no right to the land. *Empress* v. *Budh Singh, I. L. R. 2 All. 101, Re Shistidhur Parui, 9 B. L. R. App. 19,* and *Jurakhan Singh* v. *King-Emperor, 7 C. L. J. 238,* followed. AKSHOY SINGH *v.* RAMESWAR BAGDI (1916) . . **I. L. R. 43 Calc. 1143**

CROSS-APPEAL.

See CONTRACT . **I. L. R. 39 Mad. 509**

CROSS-CLAIMS.

——— under same decree—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 19.
I. L. R. 40 Bom. 60

CROSS-DECREES.

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 18 . **I. L. R. 38 All. 669**

CROSS-EXAMINATION.

——— exhibiting documents during—

See RIGHT OF REPLY.
I. L. R. 43 Calc. 426

CROSS-OBJECTION.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92 **I. L. R. 40 Bom. 541**

See SALE . **I. L. R. 43 Calc. 790**

CURRENCY NOTE.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 517
I. L. R. 40 Bom. 186

CUSTOM.

See PRE-EMPTION **I. L. R. 38 All. 27**

——— *Tribal Custom—Marriage-custom, requiring husband to live in wife's parents' household, the children being additions to wife's clan—Custom not immoral or opposed to public policy—Suit for restitution of conjugal rights by husband against wife—Removal of wife from parents' house if may be decreed.* There is nothing immoral or opposed to public policy in a tribal custom which requires a son-in-law to reside in the family of his father-in-law in order to have access to his wife. *Quœre :* Whether Lalungs are governed by Hindu Law. Assuming that they are Hindus : *Held,* that their marriage relations must be governed by customs which prevail amongst the tribe provided that the customs are neither immoral nor opposed to public policy. Their marriage custom, according to which the parents of the girl find a husband for her and take him to their house—as a member of their family—the offsprings of the marriage entering the clan of their mother —is a valid custom and is a good defence to a suit by the husband for restitution of conjugal rights by removal of the wife from her father's house. It was not injurious to the public interests, that is, to the interests of the tribe to which the parties belonged, nor was it in conflict with any express law of the ruling power. *Tekait Monmohini* v. *Basanta Kumar Singh, I. L. R. 28 Calc. 751 : s. c. 5 C. W. N. 673,* referred to. LENGA LALUNG *v.* PENGURI LALUNGNI (1915) **20 C. W. N. 406**

CUSTOM—*concld.*

CUSTOM OF SUCCESSION.

——— to estate—

See HINDU LAW—ALIENATION.
I. L. R. 43 Calc. 417

D

DAMAGE.

——— remoteness of—

See SECRETARY OF STATE FOR INDIA.
I. L. R. 39 Mad. 781

DAMAGES.

See ATTACHMENT BEFORE JUDGMENT.
I. L. R. 39 Mad. 952

See SPECIFIC PERFORMANCE.
I. L. R. 43 Calc. 59

——— measure of—

See SALE OF GOODS.
I. L. R. 43 Calc. 305

——— suit for—

See MADRAS ESTATES LAND ACT (I OF 1908), S. 189. **I. L. R. 39 Mad. 239**

See TORT . **I. L. R. 39 Mad. 433**

——— suit for, against the Secretary of State for India—

See TORT . **I. L. R. 39 Mad. 351**

——— unliquidated claim for—

See LESSER AND LESSEE.
I. L. R. 39 Mad. 939

——— *Measure of damages—Breach of contract for sale of shares—Breach by buyer—Sale by vendor at various dates after breach at higher prices than those prevailing at date of breach—Sale not in mitigation of damages—Buyer not entitled to benefit of higher rates of sale—Contract (Act IX of 1872) ss. 73 and 107.* Under contracts made at various dates between April and August 1911, the appellant agreed to sell to the respondents certain shares to be delivered on 30th December 1911. On that date the shares had fallen largely in value, and on the appellant tendering the shares the respondents declined to take them. Negotiations up to 26th February between the parties not resulting in a settlement, the appellant, after demanding a sum representing the difference between the agreed price of the shares and their value at 4-3 per share, the market price at the date of the breach of the contract, sold the shares at various dates from 28th February to October, in every case except one at a higher price than 4-3. In a suit brought on 22nd March

DAMAGES—*concld.*

1912 by the appellant for the amount demanded, the Chief Court allowed the respondents the benefit of the increased prices received by sale of the shares by giving them, in mitigation of damages, credit for the prices realised over and above the market price on 30th December, on the date of the breach :—*Held*, by the Judicial Committee (reversing that decision), that on the breach by the respondents their contractual right to the shares fell to the ground ; and the appellant thereafter sold shares belonging to himself in order to ascertain the loss arising by reason of the respondents not completing at the contract price. If after the breach the seller holds on to the shares, the speculation as to the way the market will subsequently go is the speculation of the seller, not of the buyer : the seller cannot recover from the buyer the loss below the market price at the date of the breach, if the market falls, nor is he liable to the buyer if the market rises. A plaintiff who sues for damages is bound to take all reasonable steps to mitigate the loss consequent on the breach, and cannot claim any sum due to his own neglect. But the loss to be ascertained is the loss at the date of the breach. *Staniforth* v. *Lyall, 7 Bing. 169,* followed. The fact that by reason of the loss of the contract which the defendant has failed to perform, the plaintiff obtains the benefit of another contract which is of value to him, does not entitle the defendant to the benefit of the latter contract. *Yates* v. *Whyte, 4 Bing. N. C. 272, Bradburn* v. *Great Western Railway Co., L. R. 10 Exch. 1,* and *Jebson* v. *East and West India Dock, L. R. 10 C. P. 300,* followed. The market rate of the breach is the decisive element. *Rodocanachi* v. *Milburn, L. R. 18 Q. B. D. 67,* and *Williams* v. *Agius,* [*1914*] *A. C. 10,* followed. This principle applies to a breach by either seller or buyer. Neither section 73 nor 107 of the Contract Act (IX of 1872) could be referred to as in favour of the respondents : the former was only declaratory of the right to damages, and the latter was inapplicable to the present case. JAMAL *v.* MOOLLA DAWOOD SONS & Co. (1915) . . . **I. L. R. 43 Calc. 493**

DANCING WOMAN.

———— **illegitimate son of Sudra by—**

See HINDU LAW **I. L. R. 39 Mad. 136**

DATE OF BIRTH.

See EVIDENCE . **L. R. 43 I. A. 256**

DATTAKA CHANDRIKA.

———— **s. 5, paras. 24 & 25—**

See HINDU LAW—PARTITION.
I. L. R. 40 Bom. 270

DAUGHTER.

———— **suit by, for possession of father's estate—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 2, CL. (11), O. XXII, R. 1
I. L. R. 39 Mad. 382.

DAYABHAGA SCHOOL.

See HINDU LAW—SUCCESSION.
I. L. R. 43 Calc. 1

DEAF AND DUMB ACCUSED.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 341
I. L. R. 40 Bom. 598

DEATH.

———— **presumption of—**

See LIMITATION ACT (IX OF 1908), ARTS. 140, 141 . **I. L. R. 40 Bom. 239**

DEBIT.

See MORTGAGE . **I. L. R. 39 Mad. 419**

DEBT.

See HINDU LAW—DEBT.
I. L. R. 40 Bom. 126

DEBTOR.

———— **rights of surety against—**

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), SS. 30, 47, 59, 74 AND 94 . . **I. L. R. 39 Mad. 965**

DEBTOR AND CREDITOR.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 53 . **I. L. R. 43 Calc. 521**

DECLARATION.

See MUNICIPAL LAW.
L. R. 43 I. A. 243

———— **suit for—**

See BOMBAY HEREDITARY OFFICES ACT (BOM. III OF 1874), SS. 25, 36.
I. L. R. 40 Bom. 55

See HINDU LAW—COPARCENER.
I. L. R. 40 Bom. 329

See MADRAS LAND ENCROACHMENT ACT (III OF 1905), SS. 5, 6, 7 AND 14.
I. L. R. 39 Mad. 727

DECLARATION AND INJUNCTION.

———— **suit for—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 110 . **I. L. R. 40 Bom. 477**

DECLARATION OF TITLE.

See LESSOR AND LESSEE.
I. L. R. 39 Mad. 1042

DECLARATORY DECREE.

See DECLARATORY DECREE, SUIT FOR.

———— **effect of—**

See DIGWARI TENURE.
I. L. R. 43 Calc. 743

DECLARATORY DECREE, SUIT FOR.

———— *Specific Relief Act (I of 1877), s. 42—Suit by alleged reversioner for declaration of title—Legal interest or character necessary to support claim—Suit to revoke probate*

DECLARATORY DECREE, SUIT FOR—*contd.*

after will had been affirmed by Probate Court—Suit by reversioner to prevent waste by Hindu widow, not analogous—Rule of resjudicata, origin and application of—Rule existing in Hindu as well as English law. On an application to the District Court, by the first respondent, for probate of the will of *B*, a Hindu who died leaving two widows but no male issue, the appellants entered a caveat denying the genuineness of the will, and asserting that they were the reversioners of *B* and had therefore a *locus standi* to oppose the grant of probate. The District Court held that the caveators had failed to prove their interest, and granted probate of the will to the first respondent as executor by implication. The High Court on appeal affirmed that decision, and the appellants without any further appeal instituted a suit in the Subordinate Judge's Court against the first respondent and the two widows for a declaration that they were the next reversioners to the estate of *B* according to Hindu Law in the case of an intestacy, and as such were entitled to obtain revocation of probate. The first Court gave them a decree, but on appeal the High Court held that the suit was barred by section 13 of the Civil Procedure Code, 1882, as being *resjudicata* by the decision of the District Court in the probate proceedings. *Held*, by the Judicial Committee (without deciding the question of *res judicata*), that the suit was not maintainable with reference to section 42 of the Specific Relief Act (I of 1877): the will had been affirmed by a Court of appropriate jurisdiction, and its decision could not be impugned by a Court exercising a different jurisdiction: for the purposes of the suit the will must stand, and there was no intestacy. The appellants had therefore shown no legal character or title which would justify them in asking for the declaration sought, and the suit must be dismissed as misconceived and incompetent. The right of a reversioner to sue where a widow in possession for her life estate was committing acts of waste to the prejudice of those who might succeed to the property on her death, was not analogous: such a position necessarily assumed the absence of an immediate and absolute testamentary disposition. Suits of that kind formed a very special class and the question in them was one solely between the reversioner and the widow, the former being unable by such a suit to get as between himself and a third party an adjudication of title which he could not obtain without it. *Kathama Natchiar* v. *Dorasinga Tever, L. R. 2 I. A. 169*, referred to. *Semble:* The rule of *res judicata* while founded on ancient precedent is dictated by a wisdom which is for all time: see 6 Coke's Institutes 9A. Though the rule may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded by the Hindu Commentators. Vijnaneswara and Nilakantha include the plea of a former judgment among those allowed by law, citing for this purpose a text of Kalyayana: see Mitakshara (Vyavahara) Book II, Ch. I (edited by J. R. Gharpure), p. 14; and Mayukha, Ch. I., s. 1, p. 11, of Mandlik's edition. The application of the rule by the Courts in India should therefore be influenced by no technical considerations of form but by matter of substance within the limits allowed by law. SHEOPARSAN SINGH *v.* RAMANANDAN PRASAD SINGH (1916).

I. L. R. 43 Calc. 694

DECLARATORY DECREE, SUIT FOR—*concld.*

DECREE.

See AWARD-DECREE.

See DECREE AGAINST A MAJOR AS MINOR.

See DECREE FOR POSSESSION.

See EXECUTION OF DECREE.

See EX PARTE DECREE.

See FINAL DECREE.

I. L. R. 39 Mad. 456

See LESSOR AND LESSEE.

I. L. R. 39 Mad. 1042

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 88, 89.

I. L. R. 40 Bom. 321

——— against company, before liquidation—

See COMPANIES ACT (VII OF 1913), S. 207.

I. L. R. 38 All. 407

——— against widow for husband's debt—

See HINDU LAW—WIDOW.

I. L. R. 39 Mad. 565

——— assignment of—

See SPECIFIC PERFORMANCE.

I. L. R. 43 Calc. 990

for less than amount claimed—

See CIVIL PROCEDURE CODE (1908), O. XXXIII, RR. 10 AND 11.

I. L. R. 38 All. 469

——— in mortgage suit—

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 47; O. XXII, R. 10.

I. L. R. 39 Mad. 488

——— nature of—

See LIMITATION ACT (IX OF 1908), SS. 132 AND 75 . **I. L. R. 39 Mad. 981**

——— passed in ignorance of the death of one of the respondents—

See APPEAL, PARTIES TO AN.

I. L. R. 39 Mad. 386

——— suit to set aside—

See MISTAKE . **I. L. R. 43 Calc. 217**

——— without evidence—

See EX PARTE DECREE.

I. L. R. 43 Calc. 1001

1. ——— *Decree of competent Court, if may be challenged in a fresh suit—Fraud practised on the Court, to be proved—Ex parte mortgage decree set aside against one defendant—*

DECREE—*contd.*

Re-hearing, fresh decree against all—Application for order absolute in respect of later decree, opposed by defendants against whom previous decree not set aside—Objection overruled and decree made absolute—Suit to set aside decree on same grounds, if competent—Merger of first decree in second, whether there is—First decree, whether impliedly set aside. Upon an application to set aside an *ex parte* mortgage decree passed against *P*, *R* and *B*, it was found that there was no proper service of summons upon *B*, and upon a re-hearing, a new and comprehensive decree against all three defendants was passed. The decree-holder's application for an order absolute in respect of this decree was opposed by *R* on the ground that he was no party at the re-hearing and that the previous decree against him never having been set aside, a second decree in respect of the same matter could not be legally made against him. The objections were overruled and a decree absolute was made against all the defendants. *R* then brought the present suit for a declaration upon the same grounds that the second decree was ineffectual and void as against him. *Held*, that the suit was equivalent to a suit for the rescission and destruction of a former decree of a competent Court—a relief which could not be obtained except on the ground of fraud practised upon the Court which made the decree. A challenge of the method of the exercise of the jurisdiction of a Court—a challenge which has reference to the merits of the case—can never in law justify a denial of the existence of such jurisdiction. RAJWANT PRASAD PANDE *v.* MAHANT RAM RATAN GIR (1915) . . . **20 C. W. N. 35**

2. ——— *Execution of decree—Partition effected by Collector—Partition not in accordance with the direction of the decree—Wrongful distribution of shares—Mistake—Collector's power to re-open partition—Court's duty to rectify mistake of its agent.* One Atmaram Bhagwant, a member of a Mirasi family, brought a suit for partition of his 1-36th share in three villages. In November 1888 a decree was passed directing that the half share of the Desai family in each of the three villages should first be separated and the remaining share divided between the members of the Mirasi family in accordance with the decree. Atmaram applied for execution of the decree in Darkhast No. 127 of 1893, but before partition was made on this application, defendant No. 8 filed Darkhast No. 404 of 1894 for his share. These Darkhasts were disposed of in 1898 when defendant No. 8's share was separated and given into his possession. The appellants (defendants Nos. 10—12) then applied for separate possession of their share in 1900 but when the surveyor prepared a list of lands remaining over after the first partition as the share of the appellants, the latter found that the Khasgi land in one of the villages remaining for their share was less than what they were entitled to and that the plots below and adjoining their houses had been allotted to the share of defendant No. 8. They then

DECREE—*contd.*

applied to the Collector to re-open partition. The Collector declined to do this and referred the matter to the Court on the ground that the appellants refused to take possession of their shares. The appellants, therefore, applied to the Court for fresh partition and determination of their legitimate share. The lower Courts dismissed their application as being barred by *res judicata*. On appeal to the High Court: *Held*, granting the application, that the Court would not allow a mistake of one of its agents in carrying out its directions to work permanent injustice. RAMCHANDRA DINKAR *v.* KRISHNAJI SAKHARAM. (1915) . . . **I. L. R. 40 Bom. 118**

3. ——— *Execution of the decree passed by Baroda Court—Application for execution presented to Baroda Court though within time according to Baroda law, still out of time according to British Indian law—Transfer of decree to British Indian Court—Execution barred by limitation.* A decree was passed by the Baroda Court in 1909. The first application to execute the decree was made in 1913, it being within the time prescribed by the law in Baroda. The decree was transferred to the Ahmedabad Court (British) for execution in 1915, where the judgment-debtor contended that no application to execute the decree having been made within three years of its date, the execution of the decree was barred. *Held*, that the decree was incapable of execution in the Ahmedabad Court having been barred according to the British Law of Limitation which governed the case. NABIBHAI VAZIRBHAI *v.* DAYABHAI AMULAKH (1916).

I. L. R. 40 Bom. 504

4. ——— *Suit, decision of, in the absence of defendant—Summons against one of two defendants residing outside British India returned unserved—Compromise of suit by the other defendant both for himself and the absent defendant acting on power of attorney empowering management of business and institution, conduct and defence of suits—Compromise decree if binding on absent defendant—Decree set aside even as against defendant present on the ground of decree being indivisible.* The plaintiff and the four defendants were partners. The first three defendants brought a suit against the plaintiff and the fourth defendant for dissolution of partnership and other incidental reliefs. The plaintiff was at the time admittedly residing outside British India in Rajputana and the summons which was issued against him was returned by the Political Agent at Rajputana with the remark that it was impossible to serve it upon the defendant in time as the date fixed for the hearing of the case was too close at hand. Before the summons so returned had reached the Court the suit was compromised by the fourth defendant both for himself and the plaintiff. The fourth defendant professed to represent the plaintiff on the basis of a power of attorney in his favour which authorised him to manage the partnership business, to continue, institute, prosecute, defend or oppose all suits

DECREE—*concld.*

that were or might be brought by or against the executant in respect of his business and property. The plaintiff sued to have the compromise decree set aside: *Held*, that the Code contemplates service of summons upon the party sought to be made liable and the position in the present case being in substance the same as if no summons had ever been issued for service on the defendant, the decree made against the plaintiff could not bind him. A judgment made under such circumstances as happened in the present case when the summons issued against the defendant was returned unserved may be set aside on the ground that the defendant must in essence be a party to the suit before the plaintiff can have judgment against him. That the decree was also liable to be set aside on the ground that the power of attorney did not authorise the fourth defendant to bind the plaintiff by the compromise. That the decree was liable to be set aside not only in so far as the plaintiff was concerned but also with regard to the fourth defendant because the decree on the face of it was indivisible and could not be set aside in part. That the effect of the order of the High Court was to discharge the entire decree in the suit and to revive it for retrial. CHATTERJEE BRAHMIN *v.* DURGADUTT AGARWALLA (1915) . . **20 C. W. N. 943**

DECREE AGAINST A MAJOR AS MINOR.

——— *Court-sale in execution of decree, validity of—Limitation Act (IX of 1908), Art. 12, applicability of.* A decree obtained against a person treating him as a minor while in reality he was a major on its date is not a nullity; consequently a sale in execution of such a decree cannot be set aside on the ground that the Court had no jurisdiction to pass the decree. The period of limitation to apply to set aside the court-sale is one year as provided by Article 12 of the Limitation Act. SESHAGIRI RAO *v.* HANUMANTHA RAO (1915).
I. L. R. 39 Mad. 1031

DECREE FOR POSSESSION.

——— *Decree-holder obtaining possession of the property without executing the decree—Subsequent dispossession—Maintainability of a fresh suit—Doctrine of merger where applicable.* The doctrine of merger does not apply to a decree for ejectment. If a party obtains a decree for a debt or for damages for tort, the original cause of action merges in the decree, but a decree in ejectment differs very much from other decrees. Plaintiff obtained a decree for possession of certain immoveable property which she did not put into execution for over three years, but had obtained actual physical possession over the property. She was subsequently dispossessed and brought a suit for possession. *Held*, that as she had been in actual possession of the property, a fresh cause of action had accrued and her suit was maintainable being within twelve years of such dispossession. *Quære:*

DECREE FOR POSSESSION—*concld.*

Whether a suit is maintainable upon a decree when the execution of it has become time-barred. DHANRAJ SINGH *v.* LAKHRANI KUNWAR (1916).
I. L. R. 38 All. 509

DECREE-HOLDER.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), S. 258.
I. L. R. 39 Mad. 1026

DEED, CONSTRUCTION OF.

See CONSTRUCTION OF DEEDS.

DEFAMATION.

See TORT . **I. L. R. 39 Mad. 433**

DEFAMATORY STATEMENT.

——— **made outside British India—**

See TORT . **I. L. R. 39 Mad. 433**

DEFAULT.

See MORTGAGE . **I. L. R. 39 Mad. 981**

DEFENCE.

——— **struck out—**

See FOREIGN JUDGMENT.
I. L. R. 39 Mad. 95

DEFENDANT.

——— **misdescription of—**

See PLAINT . **I. L. R. 43 Calc. 441**

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).

——— *Redemption suit—Tagavi advance by Government, nature of—Auction sale for non-payment of the advance—Benami purchase by the mortgagee—Advantage gained in derogation of the rights of the mortgagor—Purchase enures for the benefit of the mortgagor—Indian Trusts Act (II of 1882), s. 90—Transfer of Property Act (IV of 1882), s. 76, clause (c)—Land Revenue Code (Bom. Act V of 1879), ss. 56, 153—Land Improvement Loans Act (XIX of 1883), s. 7.* One *B* passed a San mortgage of the properties in suit in favour of *N* on the 20th September 1894. After *B*'s death his widow *K*, for herself and on behalf of her minor daughter, the plaintiff, executed a fresh possessory mortgage in favour of defendant No. 1, in 1903, and put him in possession. Before the date of this mortgage, *K* had obtained a *tagavi* advance from Government on survey No. 311 which was included in the mortgage. In 1905 survey No. 311 was sold by public auction for the arrears of *tagavi* and was purchased by defendant No. 1 through his *gumasta*, defendant No. 2. On the 4th August 1909 defendant No. 1 assigned his mortgage rights to defendant No. 3 and on the same day defendant No. 2 sold survey No. 311 to defendant No. 3. In 1912 the plaintiff sued to redeem the survey number along with the other mortgaged property under the provisions of the Dekkhan Agriculturists' Relief Act, 1879. The defendant

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)—*contd.*

No. 3 contended that since the sale the plaintiff had no right left in survey No. 311 and was not entitled to redeem it. On these pleadings the question arose for consideration whether the *tagavi* dues were a charge of a public nature which the mortgagee was bound to pay and whether the sale having taken place the provisions of s. 56 of the Land Revenue Code would apply so as to leave no room for the application of s. 90 of the Indian Trusts Act with reference to the conduct of the mortgagee. *Held*, that the *tagavi* advance was a charge of a public nature within the meaning of clause (*c*) of s. 76 of the Transfer of Property Act, 1882. It was a Government demand accruing due in respect of the land while it was in possession of the mortgagee. *Held*, also, that the sale having taken place owing to the default of the mortgagee, s. 90 of the Indian Trusts Act applied. *Held*, further, that s. 56 of the Land Revenue Code did not apply as it was held as a fact that there had been no forfeiture such as would be a necessary condition precedent under s. 153 of the Land Revenue Code to the application of the provisions of s. 56 for the purposes of recovering dues as arrears of land revenue. CHHITA BHULA *v.* BAI JAMNI (1916)

I. L. R. 40 Bom. 483

——— **ss. 3, cl. (y) and 10 A**—*Suit for possession under a sale-deed—Contemporaneous lease—Nature of suit—Intention of parties.* The plaintiff relying on his sale-deed of 1887 sued to recover possession of the land in suit alleging that the defendant held it as his tenant under a lease of even date with the sale-deed. The defendant pleaded that his father and not the plaintiff was the purchaser under the deed of 1887, that the plaintiff was the savkar (creditor) who advanced money and the payment of interest was secured by the contemporaneous lease. Both the lower Courts went into the question of intention of the parties under s. 10A of the Dekkhan Agriculturists' Relief Act and found the defendant's case established on facts. On appeal to the High Court. *Held*, that the case was rightly disposed of under s. 10A of the Dekkhan Agriculturists' Relief Act. The nature of the suit under clause (*y*) of s. 3 of the Act should not be determined by the frame of the plaint, but by the allegations of the parties which raised the question of mortgage or no mortgage. GAUTAM JAYACHAND *v.* MALHARI (1916)

I. L. R. 40 Bom. 397

——— **ss. 3 (*w*), 12 and 13**—*Suit for redemption—Mortgage superseded by consent-decree—Allegation of fraud—Form and reality of the suit.* The plaintiff's father executed a mortgage in 1894. In 1899, the mortgagee sued the mortgagor for the recovery of the mortgage debt and for sale of the property. In 1900, there was a consent-decree by which a new sum was taken as capitalized principal and provision was made for payment of money by instalments. The security under this arrangement differed in some particulars from the security of the earlier mortgage. On the same day as this consent-decree was obtained, Survey No. 50, which was included in the older mortgage but was excluded from the purview of the consent-decree, was sold by the mortgagor to the mortgagee. In 1903, the mortgagee obtained possession of the property and since then remained in possession. In 1911, the plaintiffs brought a suit to redeem the mortgage of 1894 by setting aside the consent-decree and the sale deed alleging that they were obtained by fraud, coercion and misrepresentation. *Held*, that the suit though in form a redemption suit was in reality a suit to set aside a sale deed and a Court's decree and then to recover property of which the plaintiffs had been fraudulently deprived. Such a suit is outside the provisions of the Dekkhan Agriculturists' Relief Act, 1879. *Bachi* v. *Rikhchand, 13 Bom. L. R. 56*, applied. S. 3, clause (*w*) of the Dekkhan Agriculturists' Relief Act, 1879, contemplates either *simpliciter* or primarily and substantially a mortgage suit. VINAYAKRAO BALASAHEB *v.* SHAMRAO VITHAL (1916) . . . **I. L. R. 40 Bom. 655**

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)—*contd.*

——— **s. 3**—*concld.*

——— **s. 15 B**—*Payment by instalments—Default in payment—Order for sale of necessary portion of property under s. 15 B (2)—Application to make the decree final under Order XXXIV, rule 5 (2) of the Civil Procedure Code, not necessary.* A decree-holder for sale upon a mortgage, in default of payment of instalments order under s. 15 B (*1*) of the Dekkhan Agriculturists' Relief Act (XVII of 1879), need not apply under Order XXXIV, rule 5 (*2*) of the Civil Procedure Code to make the decree final before he can apply for sale of the necessary portion of the property under s. 15 B (*2*) of the Act. KASHINATH VINAYAK *v.* RAMA DAJI (1916)

I. L. R. 40 Bom. 492

——— **s. 22**—*House of agriculturist—Exemption from sale—Exemption not confined to cases of contractual debts but extends to restitution proceedings—Civil Procedure Code (Act V of 1908), s. 144.* The defendants paid into Court a sum which they had to pay under a decree, and at the same time preferred an appeal against the decree. The sum paid into Court was taken away by the plaintiff. The appeal filed by the defendants was successful: the decree was reversed and the suit ordered to be retried. The defendants thereupon applied under the provisions of s. 144 of the Civil Procedure Code, for restitution of money paid by them; and prayed for an order to sell the plaintiff's house in case he failed to make the restitution. The plaintiff contended that he being an agriculturist his house could not be sold, by virtue of the provisions of s. 22 of the Dekkhan Agriculturists' Relief Act, 1879. The lower Courts negatived the contention on the ground that the provisions of s. 22 applied only in cases of contractual debts and not to

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)—*concld.*

——— s. 22—*concld.*

restitution proceedings. The plaintiff having appealed:—*Held*, that if the plaintiff was an agriculturist, his house was immune from sale under s. 22 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). The true construction of s. 22 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) is, first, a general provision that immoveable property belonging to an agriculturist shall always be immune from sale, and, secondly, a *proviso* directing that this immunity is subject to exception where the two following conditions are both satisfied, that is to say, (*a*) where the decree or order in question relates to the repayment of a debt, and (*b*) where the agriculturist's property has been specially mortgaged for the payment of that debt. The limiting words referring to a debt occur only in the *proviso* and cannot be imported into the main rule so as to restrict its express generality. MAHADEO RANGNATH *v.* RAMA TUKARAM (1915).

I. L. R. 40 Bom. 194

——— s. 72—*Agriculturist—Status at the time when the cause of action arises—Sons of original debtor, not in existence at the date of the cause of action, are yet within the statute—"Person," meaning of.* The defendants' father passed a registered bond to the plaintiff in 1900, the cause of action under which accrued in 1901. In 1912, the plaintiff filed a suit to recover moneys due under the bond and tried to bring his claim in time by reference to the provisions of s. 72 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). The defendants contended that the section did not apply, for at the time the cause of action arose in 1901, they were not only not agriculturists but were not in existence at all. The lower Court negatived the contention and decreed the suit. The defendants having appealed:—*Held*, that the suit fell within the scope of s. 72 of the Dekkhan Agriculturists' Relief Act, and that the plaintiff was entitled to the extended limitation. The word "person" in s. 72 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) is equivalent to the word "defendant" which occurs in s. 3, cl. (*w*) of the Act. PIRRAPPA *v.* ANNAJI APPAJI (1915)

I. L. R. 40 Bom. 189

DEMONSTRATIVE LEGACY.

See WILL . **I. L. R. 43 Calc. 201**

DEPENDENT RELATIVE REVOCATION.

——— doctrine of—

See HINDU LAW—WILL.

I. L. R. 39 Mad. 107

DEPOSIT IN COURT.

1. ——— *Judgment-debtor—Transferee of the judgment-debtor—Bengal Tenancy Act (VIII of 1885), s. 174—Sale, setting aside of.* An application under s. 174 of the Bengal Tenancy Act can be made by the judgment-debtor alone and by no other person. *Ranjit Kumar Ghosh* v. *Jogendra Nath Ray, 16 C. L. J. 546*, referred to. SURENEDRA NARAYAN SINGH *v.* LACHMI KOER (1915) . . . **I. L. R. 43 Calc. 100**

DEPOSIT IN COURT—*concld.*

2. ——— *Money paid under compulsion of Law—Want of bonâ fides—Action for recovery of money—Civil Procedure Code (Act V of 1908), O. XXI, r. 46, cl. (1)—Attachment of debt due to a stranger on the allegation that the garnishee's creditor was benamidar of the judgment-debtor—Deposit by garnishee, conditional, on enquiry—Withdrawal of the money from Court by the attaching creditor without notice to the garnishee—Court's power of enquiry.* Where debt due to a stranger was attached on the allegation that he was benamidar of the judgment-debtor and the attaching creditor withdrew the money by leave of the Court without notice to the garnishee, in a suit by the latter for the recovery of the money deposited, it being found that there was no benami transaction as alleged: *Held*, that the rule that money paid under compulsion of a legal process was irrecoverable can only be pleaded where the party who has got the benefit of his opponent's payments, acts *bonâ fide*. *Marriott* v. *Hampton, 7 T. R. 269*, distinguished. *Ward & Co.* v. *Wallis, [1900] 1 Q. B. 675*, followed. Clause (*3*) r. 46 of O. XXI of the Civil Procedure Code does not contemplate of cases where the deposit was purely conditional on enquiry being held as to judgment-debtor's rights and a withdrawal by the attaching creditor of the money so conditionally deposited, without notice to the garnishee, even though made with the leave of the Court, is a grave abuse of judicial process. It is true that O. XLVI does not expressly contemplate of an enquiry as is enjoined in O. V, rule 45 of the Rules of the Supreme Court in England, but the Court has inherent power to enquire. HARINATH CHOWDHURY *v.* HARADAS ACHARJYA CHOWDHURY (1915)

I. L. R. 43 Calc. 269

DEPOSIT OF MONEY.

——— into Court, time for—

See EXPARTE DECREE.

I. L. R. 39 Mad. 583

DEPOSIT OF SECURITY.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXVIII, R. 5.

I. L. R. 39 Mad. 903

DEVOLUTION OF INTEREST.

See LIMITATION . **L. R. 43 I. A. 113**

DIGWARI TENURE.

——— *Digwars of Ghat Bharra in district Bankura—Appointments made by Government—Whether any relief thereto could be given by the Civil Courts—Declaratory decree, effect of.* Where the Magistrate of Bankura sanctioned the plaintiff's appointment as Digwar in succession to his deceased father, the last holder, but the Commissioner cancelled it on a misreading

DIGWARI TENURE—*concld.*

of the law, as to his title, and on appeal to the Government the plaintiff was directed to go to the Civil Court for relief: *Held*, that the Digwars of Ghat Bharra in Bankura were the holders of an office remunerated by the enjoyment of land, and the history of the office established a general usageon the death of a Digwar holding office to appoint his heir in his place as the successor to his office. That here the usage of the heir taking his predecessor's place could be traced back to the seventeenth century and so long a usage could not be disregarded as an exponent of the Digwari right. On the contrary the force of law could safely be ascribed to it, subject to the qualification that the heir's claim and tenure of office was dependant on the approval of the Government. That the Civil Court could do no more than express its conclusion that the plaintiff was the heir of one of the last incumbents and his claim to succeed was subject to the approval of the Government, and that the ground on which the Commissioner cancelled the Magistrate's sanction was erroneous in law. *Jogendra Nath Singh* v. *Kalicharan Roy*, *9 C. W. N. 663*, distinguished. That in view of all the circumstances of the case, a declaratory decree could be made defining the plaintiff's position, though it may be that it was not really necessary, for having regard to the Government's reply referring the plaintiff to the Civil Court, it would probably be prepared to give or withhold its approval in accordance with the view expressed by the Civil Court, seeing that it invited recourse thereto. That in doing this "it was necessary" for the High Court "out of a wreckage of procedure to construct the material for a just decision" as the plaint was not happily drafted. *Cockerell* v. *Dickens*, *2 Moo. I. A. 353*, *Durga Prasad Sureka* v. *Bhagan Lal*, *I. L. R. 31 Calc. 614*; *L. R. 31 I. A. 122*, *Gopi Narain Khanna* v. *Bansidhar*, *I. L. R. 27 All. 325*; *L. R. 32 I. A. 123*, referred to. HEMENDRA NATH ROY *v.* UPENDRA NARAIN ROY AND SECRETARY OF STATE FOR INDIA (1915).
I. L. R. 43 Calc. 743

DIGWARS.

———— appointment of—

See DIGWARI TENURE.
I. L. R 43 Calc. 743

DIRECTORS OF BANK.

———— lending on unauthorised securities—

See PRESIDENCY BANKS ACT.
I. L. R. 39 Mad. 101

DISABILITY.

———— to guardianship—

See GUARDIANS AND WARDS ACT (VIII OF 1890), SS. 17, 19.
I. L. R. 39 Mad. 473

DISCIPLINARY PROCEEDINGS.

———— under clause (10), Letters Patent—

See APPEAL TO PRIVY COUNCIL.
I. L. R. 39 Mad. 128

DISCLAIMER.

See LANDLORD AND TENANT.
I. L. R. 43 Calc. 878

DISCRETION OF COURT.

See COSTS . . I. L. R. 39 Mad. 476

See FALSE INFORMATION.
I. L. R. 43 Calc. 173

See MAHOMEDAN LAW—ENDOWMENT.
I. L. R. 43 Calc. 1085

DISMISSAL OF SUIT.

———— application to set aside an order of—

See APPEAL . I. L. R. 43 Calc. 857

DISQUALIFIED PROPRIETOR.

See OUDH LAND REVENUE ACT (XVII OF 1876), SS. 173, 174.
I. L. R. 38 All. 271

DISTRAINT.

See MADRAS ESTATES LAND ACT (I OF 1908) . I. L. R. 39 Mad. 1018

See MADRAS ESTATES LAND ACT (I OF 1908), SS. 189, ETC.
I. L. R. 39 Mad. 239

DISTRESS.

See AGRA TENANCY ACT (II OF 1901), S. 124 . . . I. L. R. 38 All. 40

DISTRIBUTION OF PROCEEDS.

See LIQUIDATOR . I. L. R. 43 Calc. 586

DISTRICT BOARD.

———— sale by—

See SALE . I. L. R. 43 Calc. 790

DISTRICT COURT.

———— jurisdiction of—

See GUARDIANS AND WARDS ACT (VIII OF 1890), SS. 12, 13, 17, 19, 24, 25.
I. L. R. 40 Bom. 600

———— right of, to recall a case sent to a subordinate Court for execution—

See CIVIL RULES OF PRACTICE, S. 161 (*a*).
I. L. R. 39 Mad. 485

DISTRICT JUDGE.

———— jurisdiction of—

See WAKF . I. L. R. 43 Calc. 467

DISTRICT MAGISTRATE.

———— service of notice of appeal on—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 439, 422, 423.
I. L. R. 39 Mad. 505

DIVESTING OF ESTATE.

———— on adoption—

See HINDU LAW—ADOPTION.
I. L. R. 40 Bom. 429

DIVISIONAL COURT.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 421, 233, 537.
I. L. R. 39 Mad. 527

DIVORCE ACT (IV OF 1869).

———— **ss. 3, 16, 37 and 44**—*Dissolution of marriage—Alimony—Jurisdiction—Nature of High Court's jurisdiction—Civil Procedure Code (Act V of 1908), s. 24 (1) (a)—Transfer of proceedings.* In a suit for dissolution of marriage under the Divorce Act (IV of 1869) a decree was passed in favour of the petitioner by the Divisional Judge, Nagpur Division. The said decree was confirmed by the High Court on the 20th November 1914. The successful petitioner, thereupon, having applied to the High Court, praying that the opponent may be ordered to pay her proper sums by way of alimony. *Held*, that the Court which was empowered to make the order either for alimony or for the maintenance and education of the children was the Court of the Divisional Judge and not the High Court. *Held*, further, that having regard to the nature of the personal jurisdiction which the High Court possessed over European British subjects under s. 3 of the Divorce Act, 1869, the Court of the Divisional Judge was not a Subordinate Court in the sense in which that expression was used in s. 24 (*1*) (*a*) of the Civil Procedure Code, so as to enable the High Court to transfer the proceedings of which notice had been served upon the respondent to the Divisional Court for disposal. WALLACE *v.* WALLACE (1915).
I. L. R. 40 Bom. 109

———— **s. 37**—*Practice—Alimony—Discretion of Court. Held*, that the power to make an order for alimony in favour of the wife after a decree for divorce obtained by the husband on the ground of adultery is discretionary. In a case where there was no suggestion that the husband's conduct had led to the wife's misconduct and the wife was in fact under the roof of the co-respondent, the Court refused to exercise its discretion. *Kelly* v. *Kelly, 5 B. L. R. 71*, referred to. MCGOWAN *v.* MCGOWAN (1916).
I. L. R. 38 All. 688

DOCUMENT.

See DOCUMENTS, CONSTRUCTION OF.

———— attested by one witness only—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 59 . **I. L. R. 38 All. 461**

———— bearing forged signature—

See PENAL CODE (ACT XLV OF 1860), SS. 30, 467 . **I. L. R. 38 All. 430**

DOCUMENTS.

———— exhibiting during cross-examination—

See RIGHT OF REPLY.
I. L. R. 43 Calc. 426

DOCUMENTS, CONSTRUCTION OF.

See CONSTRUCTION OF DOCUMENTS.

See HINDU LAW—ADOPTION.
I. L. R. 40 Bom. 668

DOWER.

See MAHOMEDAN LAW—DOWER.
I. L. R. 40 Bom. 34
I. L. R. 38 All. 581

DRINK.

———— unwholesome, exposing for sale—

See MADRAS CITY MUNICIPAL ACT (III OF 1904), BY-LAW 169.
I. L. R. 39 Mad. 362

E

EASEMENT.

———— *Easement, creation of, if must be in writing registered—Transfer of Property Act (IV of 1882)—Preamble, ss. 3, 6 (c), 54, 123—Easement, if immoveable property—General Clauses Act (X of 1897), s. 3, cl. (25)—Registration Act (XVI of 1908), s. 2 (6).* The provisions of the Transfer of Property Act have no application to the creation of easements. No writing was necessary for the imposition of an easement before the Transfer of Property Act was passed; and ss. 54 and 123 of that Act were not intended to change and did not change the pre-existing law regarding easements so as to require a writing for their creation or imposition where no writing was previously necessary. Where a right of way is created in writing, s. 2 (*6*) of the Registration Act may require registration but not if the value of the right is less than one hundred rupees: *Held*, therefore, that the Courts below were right in decreeing the plaintiff's claim of a right of way by grant upon parol evidence only. *Bhagawan* v. *Narsingh, I. L. R. 31 All. 612*, referred to. Though a right of way over other lands of the landlord cannot be acquired by prescription under s. 26, Limitation Act, it can be created by grant. *Madan Mohan* v. *Sashi Bhusan, 19 C. W. N. 1211, 1214*, followed. It is extremely doubtful whether a tenant who uses a pathway by the mere leave and license of the landlord is invested with anything in the nature of a right enforcible by suit. SITAL CHANDRA CHOWDHURY *v.* A. J. DELANNEY (1916) . . . . **20 C. W. N. 1158**

EASEMENTS ACT (V OF 1882).

———— s. 15—

See NUISANCE . **I. L. R. 40 Bom. 401**

EASEMENTS ACT (V OF 1882)—*concld.*

——— **s. 15**—*concld.*

——— *Prescriptive user, period necessary for—Indian Evidence Act (I of 1872), ss. 123, 124 and 163—Confidential communications, test of.* In a suit to establish right of user by prescription against Government, the plaintiff is bound to prove under the last clause of s. 15 of the Indian Easements Act, sixty years' user. *The Secretary of State for India* v. *Kota Bapanamma Garu, I. L. R. 19 Mad. 165*, distinguished. The object of s. 124 of the Evidence Act is to prevent disclosures to the detriment of public interests and the decision as to such detriment rests with the officer to whom the communication is made and does not depend on the special use of the word "confidential." *Venkatachella Chettiar* v. *Sampathu Chettiar, I. L. R. 32 Mad. 62*, followed. NAGARAJA PILLAI *v.* THE SECRETARY OF STATE (1914) . . . **I. L. R. 39 Mad. 304**

EAST INDIA COMPANY.

——— **non-liability of—**

See TORT . **I. L. R. 39 Mad. 351**

EJECTMENT.

See LANDLORD AND TENANT.
I. L. R. 43 Calc. 164

See TENANTS-IN-COMMON.
I. L. R. 39 Mad. 1049

——— **suit for, subsequent to alienation—**

See MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT (II OF 1894), SS. 5 AND 10, CL. (*12*).
I. L. R. 39 Mad. 930

——— **suit in, against trespasser—**

See RIGHT OF SUIT.
I. L. R. 39 Mad. 501

EMERGENCY LEGISLATION CONTINUANCE ACT (I OF 1915).

———, *if ultra vires—Ordinances III and V of 1914—Power of Governor-General in Council to pass Act embodying provisions of ordinances—Ordinance III of 1914, s. 11, effect of—Jurisdiction of Courts to question orders of internment passed under Emergency Legislation Continuance Act—Indian Councils Act, 1861 (24, 25 Vict. c. 67), ss. 22, 23.* Under s. 23 of the Indian Councils Act, 1861 (24, 25 Vict., c. 67), no ordinance can have any force of law for more than six months from its promulgation but the power of the Governor-General in Council to pass an Act embodying the provisions of an ordinance is in no matter controlled or taken away by that section. It is clear that the Governor-General in Council has power to pass an Act like the Emergency Legislation Continuance Act (I of 1915) which embodies the provisions of Ordinances III and V of 1914: 1914 which is embodied in the Emergency as s. 11 of the Ordinance No. III of 1914 which is embodied in the Emergency Legislation Continuance Act of 1915 seeks to oust the jurisdiction of the Courts it offends against s. 22 of the Indian Councils Act, 1861, that the Emergency Legislation Continuance Act of 1915 is not *ultra vires* of the Governor-General in Council and the High Court has not power to call in question orders passed thereunder. It is for the Governor-General in Council to be satisfied on the materials before them and the Court cannot call for the materials or examine them. In England the common law rule that when an Act is repealed and the repealing Act is repealed by another which manifests no intention that the first shall continue repealed th e repeal of the second Act revives the first does not apply to repealing Acts passed since 1850 and the last repeal does not now revive the Act or provisions before repealed unless words be added reviving them. The same principle, or rule of law applies to this country. S. 3 of the General Clauses Act (I of 1868) expressly provided that for the purpose of reviving either wholly or partially a Statute, Act or Regulation repealed, it shall be necessary expressly to state such purpose, and the same is the effect of ss. 6 and 7 of the General Clauses Act (X of 1897). *In the matter of* JEWA NATHOO (1916).
20 C. W. N. 1327

EMOLUMENTS.

——— **partition of—**

See MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT (II OF 1894), SS. 5 AND 10, CL. (*2*),
I. L. R. 39 Mad. 930

ENCUMBRANCE.

See INCUMBRANCE.
See SALE . **I. L. R. 43 Calc. 263**

——— **by co-sharer—**

See JOINT ESTATE.
I. L. R. 43 Calc. 103

ENDORSEMENT.

See VAKALATNAMA.
I. L. R. 43 Calc. 884

ENDORSEMENT OF DOCUMENT.

——— **admitted as evidence—**

See MAHOMEDAN LAW—GIFT.
I. L. R. 38 All. 627

ENMITY OR HATRED.

——— **dissemination of—**

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R. 43 Calc. 591

EQUITABLE MORTGAGE.

See MORTGAGE . **I. L. R. 43 Calc. 895**

EQUITY OF REDEMPTION.

See MORTGAGE . **I. L. R. 38 All. 411**
See REDEMPTION .

EQUITY OF REDEMPTION—*concld.*

——— **acquisition of, by trespassers—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 65 (*c*).
I. L. R. 39 Mad. 959

ESTATE.

——— **absolute or limited—**

See HINDU LAW—WILL.
I. L. R. 38 All. 446

——— **falling into possession—**

See EXPECTANCIES.
I. L. R. 39 Mad. 554

ESTATES PARTITION ACT (BENG. V OF 1897).

——— **s. 99—**

See JOINT ESTATE.
I. L. R. 43 Calc. 103

ESTOPPEL.

See EVIDENCE ACT (I OF 1872), S. 116.
I. L. R. 38 All. 226

See HINDU LAW—PARTITION.
I. L. R. 39 Mad. 587

——— **doctrine of feeding the—**

See EXPECTANCIES.
I. L. R. 39 Mad. 554

1. ——— *Lessee inducted on land by a void lease if may plead lease void and created no rights—Lease registered in contravention of the law—Suit for damages for breach of covenant—Estoppel.* In a suit for damages by a lessor against a lessee for breach of a covenant contained in a registered lease purporting to have been granted by the lessor as tenure-holder to the lessee as undertenure-holder, it was found that in fact the lessor was an occupancy raiyat, and the lessee urged that the lease, having been granted and registered in contravention of s. 85 of the Bengal Tenancy Act, was void and inoperative: *Held*, that the lessee was estopped from showing that the lease was void and that no interest passed to him. *Bhaiganta Bewah* v. *Himmat Badyakar, 20 C. W. N. 1335*, followed. That the Court was not precluded from so holding by the previous decisions of the High Court. BAMANDAS BHATTACHARYYA *v.* NILMADHAB SAHA (1916) . . . **20 C. W. N. 1340**

2. ——— *Mortgage, suit for redemption of—Mortgagee if can deny mortgagor's title.* A mortgagee cannot resist a claim for redemption on the ground that the mortgagor had no title to the property included in the mortgage although he may establish that the title of the mortgagor has expired since the creation of the mortgage, it not being open to him to prove that the mortgagor lost his rights before the mortgage was executed. ABHURAM SIL *v.* HARA CHANDRA DAS (1915). **20 C. W. N. 1231**

EUROPEAN BRITISH SUBJECT.

——— *Summary trial outside British India by Justice of Peace—Jurisdiction—*

EUROPEAN BRITISH SUBJECT—*concld.*

Criminal Procedure Code (Act V of 1898), s. 530. The orders of the Governor-General in Council regulating the powers of the Justice of Peace beyond the limits of British India confer no power on a District Magistrate to try offenders summarily under s. 260 of the Code of Criminal Procedure (Act V of 1898). *Re* JEREMIAH (1915).
I. L. R. 39 Mad. 942

EVIDENCE.

See CRIMINAL PROCEDURE CODE, S. 512.
I. L. R. 38 All. 29

See ENDORSEMENT OF DOCUMENT.
I. L. R. 38 All. 627

See EVIDENCE ACT (I OF 1872).

See OATHS ACT (X OF 1873), SS. 5, 6 AND 13 . . **I. L. R. 38 All. 49**

See RENT DECREE.
I. L. R. 43 Calc. 170

See SECURITY FOR KEEPING THE PEACE.
I. L. R. 38 All. 468

See WILL . . **I. L. R. 40 Bom. 1.**

——— **of value of the subject matter—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 110 . **I. L. R. 40 Bom. 477**

1. ——— *Evidence—Infancy—Date of Birth—Family Record—Admissibility—Illustrations to Statute—Straits Settlements Ordinance III of 1893, and Indian Evidence Act (I of 1872), s. 32, sub-s. (5), and Illustration (l).* In an action in the Straits Settlements to recover the amount due upon certain mortgages, the defendant pleaded that he was an infant when he executed them. As evidence in support of this plea there was tendered at the trial an entry recording the date of the defendant's birth made by the defendant's deceased father in a book in which he made similar entries with regard to his family: *Held*, that under the Straits Settlements Evidence Ordinance, 1893, s. 32, sub-s. (5), and having regard to illustration (*l*) to that section, the entry was admissible in evidence. Illustrations appended to sections of a Statute should be accepted, if that can be done, as being of relevance and value in construing the text; they should be rejected as repugnant to the section only as the last resort of construction. MAHOMED SYEDOL ARIFFIN *v.* YEOH OOI GARK.
L. R. 43 I. A. 256

2. ——— *Secondary evidence—Certified copy of petition of compromise made in 1857—Record of proceedings destroyed in the Mutiny—Evidence to establish mortgage in suit for redemption of mortgage not made in writing—Stamp—Bengal Regulation X of 1829—Objection that certified copy is insufficiently stamped—Petition treated as document creating mortgage.* In a suit for the redemption of a usufructuary mortgage alleged to have been created in 1857, the document on which the plaintiffs relied to establish the mortgage was a certified copy of a petition of com-

EVIDENCE—*concld.*

promise filed in Court on the 1st of April, 1857. The record of the proceedings was admittedly destroyed in the Mutiny of that year. The document, which was admitted in evidence by the Subordinate Judge, recited the terms on which the dispute was settled, amongst them being the agreement relating to the mortgage and an endorsement on it, after reciting that "the pleaders for the parties filed the compromise in the presence of their respective clients, and verified and admitted all the conditions laid down therein" ordered that "the compromise be placed on the record, and the case be put up to-morrow for final disposal." Then followed the date and the signature of the Zillah Judge in English. The certified copy was on the 28th of April, 1857, issued to the pleader acting for the predecessors of the plaintiffs. It bore a stamp of one rupee. The defence was that the contract was not enforceable as the document was not properly stamped. The Subordinate Judge overruled the objection and decreed the suit. The District Judge held that the copy was required by article 20 of Regulation X of 1829, to bear a stamp of the same value as the original compromise; that the original bore a stamp of one rupee only, but required a stamp of ten rupees, and as it was insufficiently stamped its copy was not admissible in evidence. He reversed the decision of the first Court and dismissed the suit. The High Court on appeal restored the decision of the Subordinate Judge. *Held*, by the Judicial Committee (affirming that decision), that the mortgage was made verbally and was valid according to the law then in force, and it was notified to the Court as part of the settlement. The present suit was not based on any agreement contained in the petition, but on a contract made outside and recited in it to enable the Court to make a decree in accordance with the settlement. If the Judge did so, the defendants' objections fell to the ground, and, whether he did or not, the suit based on the agreement made independently of and before the petition was filed in Court was clearly maintainable. If, however, the petition was treated as the document creating the mortgage it might rightly be presumed that the officer before whom it was presented satisfied himself that it was properly stamped. No inference could be drawn from the fact that the copy bore a one rupee stamp, for that is the proper stamp for issuing a copy of the proceeding in the Zillah Court, and as a copy of the petition and the order thereon it bore the proper Court-fee stamp of one rupee. The District Judge fell into an error in taking the stamp on the certified copy as an indication of the stamp on the petition itself. AHMAD RAZA *v.* ABID HUSAIN (1916).

I. L. R. 38 All. 494

EVIDENCE ACT (I OF 1872).

——— **s. 13**—*Judgment not inter partes, admissibility of, for proving admission by defendant—Second appeal—Using document admissible for one purpose as evidence for another.* The plaintiff sued for recovery of his share in the land in suit. The Subordinate Judge in appeal admitted a judgment in a previous suit brought by another person against the defendant and mainly relying on a certain passage therein as proving an admission by the defendant decided in favour of the plaintiff: *Held*, that the judgment was inadmissible in evidence for the purpose of proving the alleged admission and the error committed by the Subordinate Judge in using the judgment for a purpose for which it cannot be legitimately used vitiated his decree. That the proper mode of proving any admission made by the defendant in the previous suit was by producing a copy of the defendant's deposition or by putting in the witness-box some one who actually heard what the defendant said. DEBENDRA NATH HALDAR *v.* BIRESHWAR HALDAR (1914).

20 C. W. N. 648

EVIDENCE ACT (I OF 1872)—*contd.*

——— **s. 13**—*concld.*

——— **ss. 13, 42, 43**—*Judgment not inter partes—Admissibility in evidence—Recitals in judgment if admissible.* It is well settled that although a judgment not *inter partes*, may be used in evidence in certain circumstances, as a fact in issue, or as a relevant fact, or possible as a transaction, the recitals in the judgment cannot be used as evidence in a litigation between the parties. KASHI NATH PAL *v.* JAGAT KISHORE ACHARYA CHOWDHURY (1915). **20 C. W. N. 643**

——— **ss. 18, 23**—*Conversation between one of several defendants and the plaintiff's pleader about compromise of suit, if admissible in evidence—Admission of one defendant when evidence against others.* The plaintiff sued the defendants for recovery of arrears of rent due on a lease executed in favour of their father. The substantial defence was a plea of payment which was overruled by the Courts below. The material evidence in the case was that of the plaintiff's pleader with whom one of the defendants had two interviews, once about a month before the institution of the suit, when a form of settlement was suggested, namely, diminution of interest, and again on the day the suit was instituted, when the pleader was asked to make a compromise. *Held*, that as there was admittedly no express condition that the evidence of the interviews should not be given, and it could not be inferred from the circumstances that the parties had agreed that the evidence should not be given, the evidence could not be excluded under s. 23 of the Evidence Act. That the evidence of the plaintiff's pleader as to what had passed between him and the defendants who interviewed him for the settlement of the case, was admissible and could be used even against the defendants other than the defendant who made the admission, all of them being jointly liable to the plaintiff as the representatives in interest of their father. *Per* SANDERSON *C. J.*—That so far as the first interview was concerned the mere fact that it was contemplated between the parties

EVIDENCE ACT (I OF 1872)—*contd.*

——— **s. 18**—*concld.*

that the suit was about to be instituted did not prevent the conversation as regards a settlement of the claim from being given in evidence. That the second conversation was a natural consequence of the first conversation and was not privileged. That the question whether the evidence of the interviews could be given against the defendants other than the defendants who made the admission depended upon s. 18 of the Indian Evidence Act, which enacted the principle that for making statements with reference to the joint concern or common subject of interest one partner or co-contractor is considered to be the agent of the other. *Per* MOOKERJEE *J.*—In the absence of any express or strongly implied restriction as to confidence an offer of compromise is clearly admissible and may be material as some evidence of liability although it may not be proper to enquire into the exact terms offered. That under s. 18 of the Evidence Act an admission by one defendant may in certain circumstances be admissible in evidence as against another defendant. The principle is that when several persons are jointly interested in the subject-matter of the suit, an admission by any one of these persons is receivable not only against himself but also against the other defendants whether they be all jointly suing or sued, provided that the admission relates to the subject-matter in dispute and be made by the declarant in his character of a person jointly interested with the party against whom the evidence is tendered. MEAJAN MATABOR *v.* ALIMUDDIN MEAN (1916) . . . . **20 C. W. N. 1217**

——— **s. 24**—

See PRACTICE . **I. L. R. 40 Bom. 220**

——— **s. 32, sub-s.** (*5*), **illus.** (*l*)—

See EVIDENCE . **L. R. 43 I. A. 256**

——— **s. 33**—*Court's duty before admitting evidence under—Consent or want of objection on the part of the accused to the reception of inadmissible evidence—Duty of prosecution to prove the case—Evidence Act (I of 1872), s. 458—Hearsay evidence, inadmissibility of.* Before admitting under s. 33 of the Evidence Act, a deposition given on previous occasion a Judge has to satisfy himself that the presence of the witness cannot be obtained without an amount of delay or expense which he considers to be unreasonable. It is not enough to have the statement of the Public Prosecutor to that effect; and even consent or want of objection on the part of the accused's pleader to the reception of such evidence will not, in spite of s. 58 of the Evidence Act, entitle the Court to admit it under s. 33. Hearsay evidence as to the complicity of the accused in the crime charged and evidence as to the commission of other offences by the accused not relevant for the purpose of the trial are inadmissible. Where a Sessions Judge convicted the accused relying mainly upon such inadmissible evidence as above described and did not warn the jury against acting on the same, their Lordships set aside the conviction as illegal. *Per* SESHAGIRI AYYAR, *J.*—The Evidence Act is not exhaustive of the rules of Evidence. *Re* ANNAVI MUTHIRIYAN (1915) . **I. L. R. 39 Mad. 449**

EVIDENCE ACT (I OF 1872)—*contd.*

——— **s. 33**—*concld.*

——— **s. 70**—

1. ——— *Registration Act (XVI of 1908), s. 60 (2)—Admission—Endorsement of registering officer not evidence of admission of execution of document.* The "admission" referred to in s. 70 of the Indian Evidence Act is an admission in the course of proceedings in which the attested document is produced, for example, made in the pleadings or by a party himself in his examination. The certificate of execution endorsed by the registering officer upon a document registered by him cannot be used as an "admission" of execution within the meaning of this section. RAJ MANGAL MISIR *v.* MATHURA DUBAIN (1915). **I. L. R. 38 All. 1**

2. ——— *Suit on a mortgage-bond—Admission of mortgagee, if sufficient to make mortgage admissible against other parties not admitting execution, without proof by attesting witnesses—S. 70, effect of. Per* WOODROFF and D. CHATTERJEE, *JJ.* (Newbould *J.* dissenting). In a suit on a mortgage bond the admission of execution by the sole mortgagor does not under s. 70 of the Evidence Act dispense with the necessity of complying with the provisions of s. 68 of the Evidence Act in order to prove the execution of the document as against other parties in the suit who do not admit such execution. The document must be proved as against them in accordance with the provisions of ss. 68, 69 and 70 of the Act. The effect of s. 70 is that the proof by calling attesting witnesses is dispensed with, when the party executant admits execution, only as against him. *Jogendra Nath Mukhopadhya* v. *Nitai Churn Bundopadhya, 7 C. W. N. 384,* commented on. SATISH CHANDRA MITRA *v.* JOGENDRA NATH MOHALANABIS (1916). **20 C. W. N. 1044**

——— **s. 90**—Section 90 of the Indian Evidence Act does not prove the authority of the person who has made the grant, the genuineness whereof is presumed by the Court under the provisions of that section. KASHI NATH PAL *v.* JAGAT KISHORE ACHARYA CHOWDHURY (191.). **20 C. W. N. 643**

——— **s. 92, cl.** (*a*)—*Mistake in a sale-deed to the defendant resisting suit for possession—Specific Relief Act (I of 1877), s. 31—Plea of mistake without previous rectification of sale-deed, maintainability of.* The combined effect of s. 92, clause (*a*) of the Evidence Act (I of 1872) and of s. 31 of the Specific Relief Act (I of 1877) is to entitle either party to a contract whether plaintiff or defendant to protect his right by proving a mistake in a written contract as, *e.g.*, in this case, a mistake in the description of the

EVIDENCE ACT (I OF 1872)—*contd.*

——— **s. 92**—*concld.*

property sold by giving a wrong survey number to the same. The facts that the party who is obliged to prove the mistake happens to be a defendant in the suit resisting a claim for possession of that property and that he has not previously obtained a rectification of his sale-deed are no bar to the advancement of the plea. *Mahendra Nath Mukherjee* v. *Jogendra Nath Roy Chaudry, 2 C. W. N. 260,* followed. *Mahadeva Ayyar* v. *Gopala Ayyar, I. L. R. 34 Mad. 51,* referred to. RANGASAMI *v.* SOURI (1915).

I. L. R. 39 Mad. 792

——— **s. 92, prov. 4**—*Registered kabuliyat—Acceptance by landlord for a long time of reduced rent, if precludes suit at kabuliyat rate—Admissibility of evidence of conduct to prove agreement to take rent at reduced rate or to prove that kabuliyat originally not intended to be acted upon.* The mere fact that the landlord accepted rent at a reduced rate from that stipulated for in the *kabuliyat* for some time does not bind the lessor to accept rent at that rate in future, as the reduced rent might have been accepted as a matter of indulgence which might be put an end to at any time. *Durga Prosad Singh* v. *Rajendra Narain Bagchi, I. L. R. 37 Calc. 293 : I. L. R. 41 Calc. 493 :* s. c. *18 C. W. N. 66,* referred to. Under s. 92, prov. 4 of the Evidence Act any variation of rent reserved by a registered lease must be made by a registered instrument and oral evidence is inadmissible to prove such variation, and an agreement is none the less oral because it is inferred from the conduct of the parties. Evidence that since the execution of the *kabuliyat* the tenant paid rent at a lower rate than that stated in the kabuliyat is admissible to show that the intention of the parties was that the kabuliyat from the very first was not intended to be acted upon or that there had been a waiver of the strict terms of the lease. *Benimadhub Gorain* v. *Lalmoti Dasi, 6 C. W. N. 242,* followed. MANINDRA CHANDRA NANDI *v.* DURGA SUNDARI DASSYA (1915). . **20 C. W. N. 680**

——— **s. 94**—*Mortgage—Construction of document—Misdescription of property mortgaged—Evidence admissible to show to what property the mortgage was intended to apply.* On the 27th of March, 1864, one H. B. mortgaged 91 biswas of the villages Anuda, Hasan Mahdud and Paniyala. On the 6th of February, 1873, the mortgagor executed a second mortgage of the villages comprised in the mortgage of the 27th of March, 1864, but by mistake the name of the third village was entered in the schedule of property mortgaged as Halla Nagla instead of Paniyala. *Held,* that s. 94 of the Indian Evidence Act, 1872, did not debar the mortgagees from giving evidence to show that the village of Paniyala was intended to be charged by the mortgage of the 6th of February, 1873 : the language of the later mortgage could not be regarded as clear and unambiguous. MAHABIR PRASAD *v.* MASIAT-ULLAH (1915)

I. L. R. 38 All. 103

EVIDENCE ACT (I OF 1872)—*contd.*

——— **s. 102**—

See RENT, SUIT FOR.

I. L. R. 43 Calc. 554

——— **s. 108**—

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 140, 141.

I. L. R. 40 Bom. 239

——— **s. 114**—

See PRINCIPAL AND AGENT.

I. L. R. 43 Calc. 527

——— **s. 114, illus. (d)**—

See RENT DECREE.

I. L. R. 43 Calc. 170

——— **s. 115**—*Estoppel—Minor if may be estopped from repudiating contract induced by representation that he was sui juris—Misrepresentation, not fraudulent—Contract Act (IX of 1872), s. 10.* The law of estoppel must be read subject to other laws such as a Indian Contract Act, and a minor cannot be made liable upon a contract by means of an estoppel under s. 115 of the Indian Evidence Act. *Dhurmadas* v. *Brohmo Dutt, I. L. R. 25 Calc. 616 :* s. c. *2 C. W. N. 330,* followed. *Surendra Nath Roy* v. *Krishna Sakhi Dasi, 15 C. W. N. 239,* where there was fraudulent misrepresentation, distinguished. GOLAM ABDIN SARKAR *v.* HEM CHANDRA MAJUMDAR (1915) . . **20 C. W. N. 418**

——— **ss. 115, 116, 117**—*Lessee if may deny lessor's title after expiry of term—Possession given by lessor and retained after expiry of term—Estoppel, rules of—Evidence Act, if exhaustive as to estoppel.* A lessee, so long as he retains the possession he obtained from the lessor, cannot, even after his term has expired, set up in the lessor's suit for ejectment the defence that the lessor had no title at the time the lease was granted. This rule has not been affected by s. 116 of the Indian Evidence Act. Ss. 115 to 117 of the Evidence Act are not exhaustive as to the rules of estoppel in force in British India. BHAIGANTA BEWAH *v.* HIMMAT BADYAKAR (1916).

20 C. W. N. 1335

——— **s. 116**—*Landlord and tenant—Denial of landlord's title—Estoppel.* When once a person is the tenant of another person he cannot be allowed to deny that the person whose tenant he was, was the owner when the tenancy was created. He can, no doubt, admit that his landlord was the owner at the commencement of the tenancy and allege and prove by evidence that the landlord's estate has subsequently come to an end; but he cannot deny that at the commencement of the tenancy the person with whom he entered into the contract was the owner of the property, and this disability, is not removed, by the cessation of the tenancy. *Bilas Kunwar* v. *Desraj Ranjit Singh, I. L. R. 37 All. 557,* followed. GANPAT RAI *v.* MULTAN (1916).

I. L. R. 38 All. 226

EVIDENCE ACT (I OF 1872)—*concld.*

——— **s. 118**—

See OATH ACT (X OF 1873), ss. 5, 6, 13.
I. L. R. 38 All. 49

——— **ss. 123, 124, 163**—

See EASEMENTS ACT (V OF 1882), s. 15.
I. L. R. 39 Mad. 304

EX PARTE DECREE.

See FOREIGN DECREE.
I. L. R. 40 Bom. 551

See GUARDIAN AD LITEM.
I. L. R. 38 All. 315

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), s. 17.
I. L. R. 38 All. 425

See RENT DECREE.
I. L. R. 43 Calc. 170

See SUMMONS, SERVICE OF.
I. L. R. 43 Calc. 447

1. ——— *Decree without evidence—Practice and Procedure—Unliquidated damages—Undefended suit—Defendant appearing at the trial—Leave to defend refused—Non-denial of claim, effect of—Verification of plaint—Civil Procedure Code (Act V of 1908), O. VIII, rr. 3, 5; O. IX, r. 6; O. XVIII, r. 2; O. XIX and O. XXXVII.* The plaintiffs entered into a contract with the defendants for the sale of certain goods and upon the defendants failing to deliver the same within the time specified in the contract, they brought a suit for breach of contract and claimed as damages the difference between the contract price of the goods and the market price thereof. The defendant did not enter appearance nor did they file a written statement, and the suit was in due course transferred to the list of undefended causes. On the date of hearing of the case, the defendants applied for leave to defend the suit on the ground that their attorneys had misunderstood their instructions to them to appear and defend the suit. The Court, however, refused the application and, without hearing any evidence whatsoever other than reading the affidavit of service of summons, decreed the plaintiffs' suit *ex parte: Held,* that it would be undesirable if a suit such as this were adjudicated upon without any evidence, in the real sense of the word, given by the plaintiffs where the claim was for unliquidated damages, and that the learned Judge had no jurisdiction to make the decree, which in fact he did. *Held,* also, that O. VIII, r. 5 of the Code did not apply to a case where the defendant had not put in a written statement. *Held,* also, that the verification of the plaint was not evidence on which a suit could be decreed whether the adversary did nor did not appear. *Basdeo* v. *John Smidt, I. L. R. 22 All. 55,* referred to. *Held,* further, that there was no legal evidence on the record on which the decree made in favour of the plaintiff's might be supported, and that the plaintiffs were not entitled to succeed on the basis of an implied admission of their claim by

EX PARTE DECREE—*concld.*

the defendants. *Per* SANDERSON *C. J.* The fundamental principle is that the plaintiff, when he comes to Court, must prove his case and must prove it to the satisfaction of the Court. *Per* WOODROFFE *J.* No decree can be legally given in any case without evidence except in cases of the suits governed by the provisions of O. XXXVII of the suits governed by the provisions of O. XXXVII of Civil Procedure Code. In this Court it has always been the practice in undefended cases to take evidence as defined in the Evidence Act, namely, oral statement of witnesses and documents proved before the Court. The *cursus curiæ* may be looked at when interpreting the terms of the Civil Procedure Code. *Galstaun* v. *Hutchison, I. L. R. 39 Calc. 79,* referred to. *Per* MOOKERJEE *J.* Great caution should be exercised when suits are heard *ex parte.* This observation is of universal application. But it applies with special force to cases where unliquidated damages are claimed on the allegation that there has been a breach of contract. *Amritnath Jha* v. *Dhunpat Sing, 8 B. L. R. 44,* referred to. Ross & Co. *v.* C. R. SCRIVEN (1916).
I. L. R. 43 Calc. 1001

2. ——— *Setting aside, application for—Deposit of money into Court—Time for depositing, granted—Extension of time till a certain date—Deposit not made on that date—Dismissal of application on that date, legality of jurisdiction of Court—Time granted by Court for performance of any act till a certain date, meaning of.* When time is granted by a Court for the performance of any act till a certain date, it includes that date. Where, on an application by a defendant to set aside an *ex-parte* decree in a Small Cause Suit, the Court granted time to the applicant till a certain date to deposit the decree amount, but dismissed the same as no deposit was made before the application was taken up for orders on that date: *Held,* that the Court had no jurisdiction to pass the order dismissing the application. *Dawkins* v. *Wagner, 3 Dowl. 535, Knox* v. *Simmonds, 3 Bro. C. C. 358* and *Isaacs* v. *Royal Insurance Co., L. R. 5 Ex. 296,* followed. PERUMAL NADAN *v.* SIVANAMJI NADACHI (1915).
I. L. R. 39 Mad. 583

EXCOMMUNICATION.

——— **from caste**—

See TORT . **I. L. R. 39 Mad. 433**

EXECUTION.

See DECREE . **I. L. R. 40 Bom. 504**

See FOREIGN DECREE.
I. L. R. 40 Bom. 551

——— **for sale of mortgaged property**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), ss. 47, 73, 104.
I. L. R. 39 Mad. 570

EXECUTION APPLICATION.

See LIMITATION ACT (IX OF 1908), ART. 182 . . **I. L. R. 39 Mad. 923**

EXECUTION OF DECREE.

See CIVIL PROCEDURE CODE (1908), S. 144 . . **I. L. R. 38 All. 240**

See CIVIL PROCEDURE CODE (1908), S. 145; O. XXXIV, R. 14. **I. L. R. 38 All. 327**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 2. **I. L. R. 40 Bom. 333**

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 2 . **I. L. R. 38 All. 204**

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 16 . **I. L. R. 38 All. 289**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 19. **I. L. R. 40 Bom. 60**

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 63 . **I. L. R. 38 All. 72**

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 66 . **I. L. R. 38 All. 481**

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 89. **I. L. R. 40 Bom. 557**

See CIVIL RULES OF PRACTICE, R. 161. **I. L. R. 39 Mad. 485**

See DECREE . **I. L. R. 40 Bom. 118**

See DECREE AGAINST A MAJOR, AS MINOR. **I. L. R. 39 Mad. 1031**

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S. 22. **I. L. R. 40 Bom. 194**

See HINDU LAW—COPARCENER. **I. L. R. 40 Bom. 329**

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 165, 181. **I. L. R. 38 All. 339**

See PRACTICE . **I. L. R. 43 Calc. 285**

See PROVINCIAL SMALL CAUSE COURTS ACT (VII OF 1887), S. 25. **I. L. R. 38 All. 690**

See REVIVOR . **I. L. R. 43 Calc. 903**

See SALE IN EXECUTION OF DECREE.

1. ——— *Decree-holder—Payment of money by judgment-debtor by way of interest—Notification of the payment to Court—Certification of the payment—Civil Procedure Code (Act V of 1908), O. XXI, r. 2—Limitation Act (XV of 1877), ss. 19, 20.* A decree-holder who has received a certain sum of money by way of payment of interest, might either apply to certify payment before execution or might do so on his application for execution of the decree. On the 17th February, 1906, the plaintiff obtained a decree and on the 18th May, 1911, he applied for execution. At the time of the application he notified to the Court that he had received a certain sum on the 19th June, 1908, from the judgment-debtor towards interest and alleged that the execution was not barred by limitation:—*Held,*

EXECUTION OF DECREE—*concld.*

that the notification to the Court of the receipt of the sum paid by the judgment-debtor was all that the decree-holder had to do in order to certify payment, and O. XXI, r. 2 of the Code of Civil Procedure did not stand in the way. EUSUFFZEMAN SARKAR *v.* SANCHIA LAL NAHATA (1915). **I. L. R. 43 Calc. 207**

2. ——— *Sale of zamindari rights—Whether buildings pass with the zamindari or not.* The doctrine that the sale by auction of a zamindari share includes also buildings situated within the zamindari, is only applicable in the absence of evidence indicating an intention to exclude such buildings from the sale. *Abu Hasan v. Ramzan Ali, I. L. R. 4 All. 381,* distinguished. SAKHAWAT ALI SHAH *v.* MUHAMMAD ABDUL KARIM KHAN (1915) . **I. L. R. 38 All. 59**

EXECUTION SALE.

——— *Execution sale set aside for irregularities of decree-holder—Right of purchaser to return of poundage fees and to interest on purchase money—Right of suit—Civil Procedure Code (Act V of 1908), O. XXI, r. 93, no bar by.* A Court-sale was set aside on account of irregularities in its conduct, perpetrated by the decree-holder. The purchaser thereupon filed a suit for a return of the poundage fees not returned to him and interest on the purchase money paid by him. *Held* (overruling the objection that remedy for the return of the poundage fees lay only in execution), that a suit was maintainable for the recovery of the same. *Powell v. Powell, 19 Eq. 422,* followed. The poundage fee is really part of the purchase money paid. *Held,* also, that the purchaser was entitled to interest on the purchase money paid by him. *Raghubir Dayal v. The Bank of Upper India, Limited, I. L. R. 5 All. 364,* followed. PARVATHI AMMAL *v.* GOVINDASAMI PILLAI (1915) . **I. L. R. 39 Mad. 803**

EXECUTOR.

See HINDU LAW—WILL. **I. L. R. 39 Mad. 365**

See LIMITATION . **L. R. 43 I. A. 113**

See PROBATE . **I. L. R. 40 Bom. 666**

See WILL . . **I. L. R. 40 Bom. 1**

EXECUTORSHIP.

——— **renunciation of—**

See HINDU LAW—WILL. **I. L. R. 39 Mad. 365**

EXECUTRIX.

——— **death of—**

See PROBATE . **I. L. R. 43 Calc. 625**

EXPECTANCIES.

——— *Contracts for sale of, validity of—Transfer of Property Act (IV of 1882), s. 6—Indian Contract Act (IX of 1872), s. 23—Estate falling into possession—Specific performance, suit for—Maintainability of suit—Rule of English*

EXPECTANCIES—*concld.*

Law—Rule in India before Transfer of Property Act—Doctrine of feeding the estoppel, meaning of. Contracts for sale of expectancies are void in India under the provisions of s. 6 of the Transfer of Property Act and s. 23 of the Indian Contract Act, and a suit for the specific performance of such a contract, instituted after the expectancy fell into possession is not maintainable. The statute law of India forbids *transfers* of expectancies, and it would be futile to forbid such transfers, if contracts to transfer them are to be enforced as soon as the estate falls into possession. In England and in India before the Transfer of Property Act, a mere chance of succeeding to an estate was a bare possibility incapable of assignment, but in England it is settled law that in the case of such expectancies, equity will enforce a contract to convey the estate when it fell in, and a similar rule has been applied in India in cases which were not governed by the Transfer of Property Act. Courts are bound to give effect to the plain provisions of the statute law, instead of following a course of English decisions which are based on a course of long established practice rather than on principle. 'Equitable doctrine of feeding the estoppel' explained. *Raja Sahib Prahlad Sen* v. *Baboo Sundur Singh, 2 B. L. R. 111, 117, Oodey Koowur* v. *Mussumat Ladoo, 13 Moo. I. A. 585, Ram Nirunjun Singh* v. *Prayag Singh, I. L. R. 8 Calc. 138, Gitabai* v. *Balaji Keshav, I. L. R. 17 Bom. 222, Sumsuddin* v. *Abdul Husein, I. L. R. 31 Bom. 165, Dhoorjeti Subayya* v. *Dhoorjeti Venkayya, I. L. R. 30 Mad. 201,* and *Sham Sundur Lal v. Acchan Kunwar, I. L. R. 21 All. 71,* referred to. SRI JAGANNADA RAJU *v.* SRI RAJA PRASADA ROW (1915) . . . **I. L. R. 39 Mad. 554**

F

FACT.

——— questions of—

See APPEAL . **I. L. R. 43 Calc. 833**

FALSE INFORMATION.

See FALSE INFORMATION TO POLICE.

——— *Information to the police reported false—Subsequent petition to the Magistrate impugning the report and praying for trial—Complaint—Proper procedure—Reference of complaint to another Magistrate for inquiry and report, legality of—Power of latter to hold inquiry and direct prosecution of informant for offences under ss. 182 and 211 of the Penal Code—Jurisdiction of referring Magistrate to try such charges on the police report without previous disposal of the complaint—Discretion—Prejudice—Criminal Procedure Code (Act V of 1898), ss. 192, 200 to 203, 476, 537.* A petition impugning the police report, and praying that the accused be placed on trial is a " complaint " under the Criminal Procedure Code. When such a petition is

FALSE INFORMATION—*concld.*

presented to a Sub-divisional Magistrate he should, therefore, either examine the complainant himself, record reasons for distrusting its truth, hold an inquiry personally, and then pass a formal order of dismissal, or he should make it over to another Magistrate for disposal. The latter may then, after inquiry, make a proper order dismissing the complaint and pass an order under s. 476 of the Code. The Code does not permit a Magistrate to refer a complaint to another Magistrate for inquiry and report, and the latter has no jurisdiction in such a case to pass an order under s. 476. Where in such a case the police have reported the information as false, and have asked for a prosecution, the Magistrate has jurisdiction to try the charge on the police report. *Queen-Empress* v. *Sham Lall, I. L. R. 14 Calc. 707,* referred to. There is no statutory provision requiring such petition to be finally disposed of as a complaint before a prosecution under s. 211 of the Penal Code commences. It is a matter of discretion, and the High Court will not, having regard to s. 537 of the Code, interfere with a conviction if the accused has not been prejudiced. GANGADHAR PRADHAN *v.* EMPEROR (1915) . . **I. L. R. 43 Calc. 173**

FALSE INFORMATION TO POLICE.

See SANCTION FOR PROSECUTION.
I. L. R. 43 Calc. 1152

FAMILY ARRANGEMENT.

See HINDU LAW—ADOPTION.
I. L. R. 40 Bom. 668

FAMILY RECORD.

See EVIDENCE . **L. R. 43 I. A. 256**

FAMILY SETTLEMENT.

See REGISTRATION ACT (XVI OF 1908), SS. 17, 49. . **I. L. R. 38 All. 366**

——— *Claim to property to which the claimant must have known he had no title—Relinquishment to save litigation—Such relinquishment not binding on reversioners.* One *D. R.* upon the death of his wife, laid claim to certain property which had been the property of the wife's father and had been given to the wife by her mother. The mother and the surviving sister of the wife, in order to avoid litigation, relinquished a substantial portion of the property to *D. R. Held,* on a suit by the reversioners entitled to succeed to the property upon the death of the survivor of the two ladies, that the relinquishment made by them could not properly be called a family settlement and was not valid as against the reversioners who were minors at the time when the so-called family settlement was made. *Bihari Lal* v. *Daud Husain, I. L. R. 35 All. 240,* and *Hiran Bibi* v. *Sohan Bibi, 18 C. W. N. 929,* referred to. HIMMAT BAHADUR v. DHANPAT RAI (1916) . **I. L. R. 38 All. 335**

FATHER'S ESTATE

———— possession of, daughter's suit for—

See CIVIL PROCEDURE CODE (ACT X OF 1908), S. 2, CL. (11), O. XXII, R. 1.
I. L. R. 39 Mad. 382

FATHER'S HEIRS

———— right of, to continue suit—

See CIVIL PROCEDURE (ACT V OF 1908), S. 2, CL. (11), O. XXII, R. 1.
I. L. R. 39 Mad. 382

FEMALE HEIRS.

See HINDU LAW—STRIDHAN.
I. L. R. 43 Calc. 64

FERRY.

See SPECIAL CONSTABLES.
I. L. R. 43 Calc. 277

FINAL DECREE

———— expenses incurred in the—

See TRUSTEES OF A TEMPLE.
I. L. R. 39 Mad. 456

FINDING OF FACT.

See SECOND APPEAL.
I. L. R. 38 All. 122

FIRST-CLASS MAGISTRATE.

See PERJURY . **I. L. R. 43 Calc. 542**

FITNESS OF SURETY.

See SURETY . **I. L. R. 43 Calc. 1024**

FORCE MAJEURE.

See CONTRACT ACT (IX OF 1872), S. 56.
I. L. R. 40 Bom. 301

FOREIGN COURT.

1. ———— *Appearance by the defendant—Protest against jurisdiction—Defence on the merits—To get refund from the creditor's son to whom the suit debt was repaid and to avoid arrest—Voluntary submission to jurisdiction.* The defendant who was sued in a foreign Court, *viz.*, a Court in the Cochin State, appeared and defended the suit against him on the merits but protested against the jurisdiction of the Court. His reasons for appearing and defending the suit were: (i) that the creditor's son to whom he had repaid the suit debt refused to refund the money unless he defended the suit brought by the father and (ii) that if a decree were passed against him, he might be arrested when he went to Cochin on business or to see his relations. *Held*, that the defendant must be deemed to have submitted to the jurisdiction of the foreign Court voluntarily notwithstanding his protest against its jurisdiction. *Parry & Co.* v. *Appasami Pillai, I. L. R. 2 Mad. 407*, overruled. RAMA v. KRISHNA (1915) . . **I. L. R. 39 Mad. 733**

2. ———— *Suit in, on cause of action tried and determined between the parties in a British Indian Court—Latter Court, if may issue perpetual injunction to restrain proceeding in Foreign Court—Res judicata—Civil Procedure Code (Act V of 1908), ss. 11, 13—Specific Relief Act (I of 1877), s. 56(B).* A A, a Mahomedan, died leaving estates situate partly within British India and partly within the ceded district of the Feudatory State of Rampur, and leaving him surviving a widow, a daughter and her children. The daughter and her children alleging that A A was a Shia and that therefore the daughter excluded the residuary heirs from inheritance instituted a suit against the latter in a British Indian Court (*viz.*, the Court of the Subordinate Judge at Bareilly), where their claim was opposed by the residuaries, and finally obtained an *ex parte* decree upholding their claim, the defendants having failed to obtain an adjournment which they said was necessary to enable them to call witnesses. This decree was affirmed by the High Court at Allahabad. Meanwhile the residuaries instituted against the daughter and her children a suit in a Court of the Rampur State for possession of a moiety of the estate of A A situate in the ceded district of Rampur State claiming, as they had done in their defence in the other suit, that A A was a Sunni. The daughter and her children thereupon instituted another suit in the Court of the Subordinate Judge at Bareilly praying for a declaration that the previous decree of the Court was binding between the parties and operated as *res judicata* and that the defendants (the residuaries) be restrained by a perpetual injunction from continuing their suit in the Court of the Rampur State. The Subordinate Judge as well as the High Court at Allahabad on appeal having held that they had no jurisdiction to grant the injunction and dismissed the suit, the Privy Council on the appeal of the plaintiff's affirmed that decision and dismissed their appeal. *Maqbul Fatima* v. *Amir Hasan Khan, I. L. R. 37 All. 1*, affirmed. MAQBUL FATIMA *v.* AMIR HASAN KHAN (1916) . . . . **20 C. W. N. 1213**

FOREIGN COURT—*concld.*

FOREIGN DECREE.

See DECREE . **I. L. R. 40 Bom. 504**

1. ———— *Execution by British Court—The British Court can inquire if the decree was passed with jurisdiction—Ex parte decree—Absent defendant not submitting to jurisdiction—Decree, a nullity—Civil Procedure Code (Act V of 1908), st. 44, Order XXI, rule 7—Act XIV of 1882, s. 229 B.* It is open to a British Court executing a foreign decree to enquire whether the foreign Court had jurisdiction to pass the decree. A decree pronounced by a Court of a foreign state in a personal action *in absentem*, the absent party not having submitted himself to its authority, is a nullity. JIVAPPA TIMMAPPA *v.* JEERGI MURGEAPPA (1916).
I. L. R. 40 Bom. 551

2. ———— *Execution of foreign decree in British India—Competency of*

FOREIGN DECREE—*concld.*

British Indian Courts to question the jurisdiction—Appearance to save property from seizure—Denial of jurisdiction and claim—Jurisdiction, submission to, whether voluntary. It is competent to the executing Court to refuse execution of a foreign decree sought to be executed in British India under s. 44 of the Code of Civil Procedure on the ground that such decree was passed without jurisdiction. Submission is not voluntary if the appearance is made only to save property which is in the hands of a foreign tribunal. *Voinet* v. *Barrett, 55 L. J. (Q. B. D.) 39, Guiard* v. *De Clermont and Donner, 30 T. L. R. 511,* and *Boissiere & Co.* v. *Brockner & Co., 6 T. L. R. 85,* followed. *Parry & Co.* v. *Appasami Pillai I. L. R. 2 Mad. 407,* doubted. *Per* WALLIS, OFFG. *C. J.*—Whether submission was for the purpose of saving property or voluntary is a question of fact in each case. *Per* SESHAGIRI AYYAR, *J.*—The change in the language between s. 225 of the Civil Procedure Code (Act XIV of 1882) and O. XXI, r. 7, of the Code of 1908 does not warrant the conclusion that in regard to decrees obtained within British India the executing Court has no jurisdiction to question the jurisdiction of the Court which passed the decree. The words "As if they have been passed by the Courts in British India," relate only to the mode of execution and have not the effect of giving foreign judgments all the incidents of a judgment of a British Court. VEERARAGHAVA AYYAR *v.* MUGA SAIT (1914).

I. L. R. 39 Mad. 24

FOREIGN JUDGMENT.

——— *Defence struck out—No decision on the merits—No cause of action.* Where in a suit in a foreign Court, defence was struck out and judgment entered for plaintiff: *Held,* that the judgment is not one decided on the merits and thus not being conclusive could not of itself constitute a cause of action to the suit. VISWANADHA REDDI *v.* KEYMER (1914).

I. L. R. 39 Mad. 95

FOREST ACT (VII OF 1878).

See CONTRACT ACT (IX OF 1872), S. 23.

I. L. R. 40 Bom. 64

FORFEITURE.

See RIGHT OF SUIT.

I. L. R. 40 Bom. 200

See TENANTS-IN-COMMON.

I. L. R. 39 Mad. 1049

——— **relief against—**

See LANDLORD AND TENANT.

I. L. R. 39 Mad. 834

See TENANTS IN-COMMON.

I. L. R. 39 Mad. 1049

FORGED DOCUMENT

——— **copy of—**

See FORGERY **I. L. R. 43 Calc. 783**

FORGERY.

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 92, 93.

I. L. R. 40 Bom. 22

See PENAL CODE (ACT XLV OF 1860), SS. 30, 467 . **I. L. R. 39 All. 430**

1. ——— *Certified copy, filing of, whether user of forged document, if original be forged—Evidence of intention—Penal Code (Act XLV of 1860), ss. 466, 471.* A series of similar transactions which are not the offence charged can only be used as evidence of the intention of the person who forged the document and not as evidence of forgery. It is extremely doubtful whether the mere filing of a copy is the user of a forged document. A certified copy thereof is certainly not a forged document. But it is otherwise where the offender used the copy knowing or having reason to believe that the entries in the original documents were forgeries and intending to use them for fraudulent purposes. *Queen* v. *Nujum Ali, 6 W. R. Cr. 41,* and *Emperor* v. *Mulai Singh. I. L. R. 28 All. 402,* distinguished. KRISHNA GOVINDA PAL *v.* EMPEROR (1915).

I. L. R. 43 Calc. 783

2. ——— *Signing certificate of purchase of arms and ammunitions in false names and giving wrong addresses—Person legally entitled to possess the same—Act "fraudulent" if not "dishonest"—Penal Code (Act XLV, 1860), ss. 23, 24, 463 to 465.* A person lawfully entitled to possess arms and ammunitions signing the prescribed certificate of purchase of the same in the name of another with an address not his own, and thereby deceiving the gunsmith and the Government and defeating the object of the certificate, commits forgery: his act having been done "fraudulently," if not "dishonestly." *Reg.* v. *Toshack, 1 Den. C. C. R. 492, Empress* v. *Dhunum Kazee, I. L. R. 9 Calc. 53,* and *Queen-Empress* v. *Abbas Ali, I. L. R. 25 Calc. 512,* followed. CAUSLEY *v.* EMPEROR (1915).

I. L. R. 43 Calc. 421

FORWARD CONTRACT.

See CONTRACT ACT (IX OF 1872), S. 47.

I. L. R. 40 Bom. 517

FOUNDER.

——— **descendant of—**

See WAKF . **I. L. R. 43 Calc. 467**

——— **intention of—**

See INTENTION OF FOUNDER.

FRAUD.

See FORGERY . **I. L. R. 43 Calc. 421**

See MISTAKE . **I. L. R. 43 Calc. 217**

See SUIT TO SET ASIDE A DECREE.

I. L. R. 38 All. 7

——— **by guardian—**

See MINOR . **I. L. R. 38 All. 452**

1. ——— *Fraud different from that alleged in plaint, if can be relied on—Duty*

FRAUD—*contd.*

of plaintiff to state facts constituting alleged fraud—Document bearing genuine signature—Burden on signatory to prove falsity of recitals. When a plaintiff impeaches a transaction on the ground of fraud the facts which constitute the alleged fraud must be distinctly, specifically and accurately stated. That a charge of fraud must be substantially proved or laid and when one kind of fraud is charged, another kind of fraud cannot, upon failure of proof, be substituted for it. That the rule that the Court will grant only such relief as the plaintiff is entitled to upon the case made by his pleadings is strictly enforced when the plaintiff relies on fraud. That when a party seeks to avoid the Statute of Limitation on the ground of fraud the statement of claim should set forth specifically the particular acts which constitute the fraud as well as the time when it was discovered in order to enable the defendant to meet the fraud and the alleged time of its discovery so that the Court may see whether by the exercise of ordinary diligence the discovery might not have been made before. BANSIRAM *v.* PANCHAMI DASI (1914).

20 C. W. N. 638

2. ——— *Fraud ex parte decree and sale thereunder—Suit to set aside decree and sale on the ground that processes in suit and execution suppressed in collusion with officers of Court—Suit if maintainable—Case of fraud, pleading and proof in.* Where the plaintiff in a suit to set aside an *ex parte* rent decree and sale held thereunder alleged that the defendants had in collusion with the officers of the Court, caused a suppression of the processes in the suit as also in the execution proceedings: *Held*, that if this allegation had been established, the plaintiff would have been entitled to succeed. The mere circumstance that a defendant had failed to have an *ex parte* decree set aside under s. 108, C. P. C. (of 1882) or to have a sale set aside on the ground of material irregularity does not debar him from seeking relief in a suit properly framed for the purpose on the ground that the suit itself was a fraudulent suit and that the proceedings therein were vitiated by fraud. But to enable the plaintiff to succeed in a suit so framed, he must specifically allege the circumstances of fraud and he must prove the fraud as laid in the plaint. Fraud how to be pleaded and in what manner established discussed. NAGENDRA NATH BOSE *v.* PARBATI CHARAN (1914) . **20 C. W. N. 819**

3. ——— *Suit to set aside ex parte decree on ground of fraud if lies, when application to set aside refused.* A suit by the defendant to set aside an *ex parte* decree as fraudulent does not lie after an infructuous application to set it aside under s. 108 of the Civil Procedure Code of 1882, if the fraud in respect of which the decree is sought to be set aside was properly in issue in the application under s. 108 and was determined upon such application. *Radha Raman Saha* v. *Pran Nath Roy, I. L. R. 28 Calc. 475:* s. c. *5 C. W. N. 756, Khagendra Nath Mahata* v. *Pran Nath Roy, I. L. R. 29 Calc. 395:* s. c. *6 C. W. N. 473, Bal Kishan Lal* v. *Topeswar Singh, 15 C. L. J. 446, 448, Gulab Koer* v. *Badshah Bahadur, 10 C. L. J. 428, Puran Chand* v. *Sheodat Rai, I. L. R. 29 All. 212,* and *Naidar Mal* v. *Ranuak Husain, I. L. R. 29 All. 608,* referred to. KHIRODE CHANDRA ROY *v.* SRIMATI ASHTULLABU (1916) . **20 C. W. N. 845**

FRAUDULENT EXECUTION.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 2.

I. L. R. 40 Bom. 333

FRAUDULENT PREFERENCE.

——— *State of mind of maker—Intention—Receiver—Onus—Provincial Insolvency Act (III of 1907), s. 37.* The question whether there has been a fraudulent preference depends not upon the mere fact that there had been a preference but also on the state of mind of the person who made it. It must be shown not only that he has preferred a creditor but that he has fraudulently done so. It depends upon what was in his mind. For this purpose, it is not true that the debtor must be taken to have intended the natural consequences of his acts. One must find out what he really did intend. *Dicta* of Lord Halsbury in *Sharp* v. *Jackson,* [*1899*] *A. C. 419,* followed. It is not necessary to threaten criminal proceedings to constitute pressure. The threat of civil suits is enough. If it is established that the transaction was the result of real pressure brought to bear by a creditor on his debtor, it cannot be deemed as a spontaneous act. The onus is on the Receiver to show that it was an outcome of a fraudulent preference. NRIPENDRA NATH SAHU *v.* ASHUTOSH GHOSE (1915) . . **I. L. R. 43 Calc. 640**

FRAUDULENT REPRESENTATION.

See CONTRACT ACT (IX OF 1872), SS. 20, 65 . . **I. L. R. 40 Bom. 638**

FRAUDULENT SUPPRESSION.

See SUBROGATION **I. L. R. 43 Calc. 69**

FREIGHT.

——— **paid in advance—**

See CONTRACT ACT (IX OF 1872), SS. 56, 65 . . **I. L. R. 40 Bom. 529**

FULL BENCH.

——— *When a reference should be made to full bench.* Advantage of referring matters, upon which a difference of opinion has arisen in the High Court, to a Full Bench adverted to. BUDDHA SINGH *v.* LALTU SINGH (1915).

20 C. W. N. 1

G

GAMBLING.

See BOMBAY PREVENTION OF GAMBLING ACT (BOM. IV OF 1887), S. 3.
I. L. R. 40 Bom. 263

GARNISHEE

———— **deposit by—**

See DEPOSIT IN COURT.
I. L. R. 43 Calc. 269

GENERAL REPEALING ACT (XII OF 1873).

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 115 . **I. L. R. 40 Bom. 86**

GIFT.

See MAHOMEDAN LAW—GIFT.
I. L. R. 38 All. 627

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 123, 129.
I. L. R. 38 All. 212

———— **of land, by coparcener—**

See HINDU LAW—PARTITION.
I. L. R. 39 Mad. 587

———— **to illegitimate son—**

See HINDU LAW—GIFT.
I. L. R. 39 Mad. 1029

———— **to wife and children or children alone—**

See MALABAR LAW.
I. L. R. 39 Mad. 317

GODOWNS.

See LAND ACQUISITION.
I. L. R. 43 Calc. 665

GOODS.

———— **non-delivery of—**

See SPECIFIC MOVEABLE PROPERTY.
I. L. R. 39 Mad. 1

GOVERNMENT.

———— **right of—**

See ASSESSMENT **I. L. R. 43 Calc. 973**

———— **suit against—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 80 **I. L. R. 40 Bom. 392**

GOVERNMENT LANDS.

See MADRAS ESTATES LAND ACT (I OF 1908), SS. 6, SUB-S. (*6*), 8.
I. L. R. 39 Mad. 944

GOVERNMENT OF INDIA ACT, 1915.

———— **ss. 106, 107—**

See PRESS ACT (I OF 1910), S. 3 (*1*), PROVISO . **I. L. R. 39 Mad. 1164**

GOVERNMENT ORDER.

See SECRETARY OF STATE FOR INDIA.
I. L. R. 39 Mad. 781

GOVERNMENT PROCLAMATIONS.

See SALE OF GOODS.
I. L. R. 40 Bom. 11

GOVERNMENT SALE.

See WASTE LANDS.
L. R. 43 I. A. 303

GOVERNMENT SERVANTS' CONDUCT RULES, 1904.

See HINDU LAW—DEBT.
I. L. R. 40 Bom. 126

GOVERNMENT SOLICITOR.

See COSTS . **I. L. R. 40 Bom. 588**

GRACE, DAYS OF.

———— **for payment of rent—**

See LANDLORD AND TENANT.
I. L. R. 39 Mad. 834

GRAMOPADHYA.

See VATANDAR JOSHI.
I. L. R. 40 Bom. 112

GRANT.

1. ———— *Grant by the Maharaja of Chota Nagpur—Custom of primogeniture—Impartibility of the estate—Proof of custom, onus of—Lex loci custom of Chota Nagpur—Meaning of putra pautradi.* Certain grants of *jaigirs* by the Maharaja of Chota Nagpur to a person related to him or to his descendants dating from 1768 to 1786 were in terms to the grantee and his sons and grandsons (*putra pautradi*). The family of the grantee had for several generations interpreted the words "*putra pautradi*" in the literal sense, namely, to mean, son and son's son. *Held*, that at the time of these grants the words had not acquired in Chota Nagpur the technical meaning which according to the Privy Council in *Lalit Mohun* v. *Chukkun Lal, L. R. 24 I. A. 76 :* s. c. *1 C. W. N. 387*, they came to have by 1868 when used in Wills executed in Bengal, and the grants in this case did not convey an absolute estate unconditioned and unlimited. *Per* ATKINSON, J. —That although as held by the Privy Council the words convey an absolute estate in lands descendable from generation to generation coupled with full power of alienation, these words of limitation may be controlled by custom limiting their scope and operation. *Perkash Lal* **v.** *Rameswar Nath Singh, I. L. R. 31 Calc. 561, 569*, relied on. Up to 1862, the lands granted descended regularly according to the rule of primogeniture to the eldest lineal descendant of the eldest son, when the last male descendant of that line dying leaving a widow, the Maharaja proceeded to resume the property whilst two brothers, the descendants of a younger son, claimed to succeed to the property. The disputes terminated in two deeds, one executed by the brothers agreeing that the widow should hold possession of the property as long as she lived upon payment of rent to the Maharaja and that they should take possession after her death, and the other by the Maharaja purporting on receipt of con-

sideration to release the lands to the brothers in equal shares. *Held*, that as there was no failure of heir in the line of the grantee, the Maharaja had no right to resume and the *sanad* to the brothers was a nullity. *Per* CHAPMAN J.—That as the younger of the brothers had the right to succeed on the death of the elder without male issue, his concurrence to the deed in favour of the widow might have been taken to avoid future trouble. *Per* ATKINSON J.—That the agreement was ineffective to alter or vary the impartible character of the property or to change its method of devolution. *Per* ATKINSON J.—The custom of primogeniture which prevails in Chota Nagpur in the case of grants made by the Maharaja whereby the property so granted is deemed impartible and descends to the eldest male heir by lineal descent applies with greater force in the case of grants of property made between the Maharaja and his relations. *Kopilnauth* v. *Government, 22 W. R. 17*, referred to. Where a custom prevails in one branch of a family it is strong evidence to be relied on that it applies with equal force to another branch of the same family. *Garuradhwaja Prasad* v. *Superundhwaja Prasad, I. L. R. 23 All. 37; 5 C. W. N. 33;* relied on. The custom is recognised, not only as a family custom prevailing in the Maharaja's family, but also as the *lex loci* custom of Chota Nagpur. GAJENDRA NATH SAHI DEO *v.* MATHURA NATH SAHI DEO (1916) . **20 C. W. N. 876**

2. ——— *Presumption of lost grant, in absence of proof of legal title, on the basis of user exercised and enjoyed.* Where a Court is asked to presume a grant in favour of a party in the nature of a lost grant, *i.e.*, a lawful origin of a long and continuous user and enjoyment of property in the absence of legal proof of title, it should presume a grant on the basis of the user exercised and enjoyed by that party. NAWAGARH COAL COMPANY, LD. *v.* BEHARILAL TRIGUNAIT (1916) . . . . **20 C. W. N. 1135**

GRAVEL.

——— stocking of, on a military road—

See TORT . **I. L. R. 39 Mad. 351**

GREAT-GRANDFATHER'S SON'S DAUGHTER'S SON—

See HINDU LAW—SUCCESSION.

I. L. R. 43 Calc. 1

GRIEVOUS HURT.

See PENAL CODE (ACT XLV OF 1860) SS. 100, 325 **I. L. R. 40 Bom. 105**

GUARDIAN.

See GUARDIANS AND WARDS ACT (VIII OF 1890), S. 7 **I. L. R. 40 Bom. 513**

See MINOR . **I. L. R. 38 All. 452**

GUARDIAN AD LITEM.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXII, R. 7.

I. L. R. 39 Mad. 853

——— *Joint Hindu family—Suit on mortgage against father and sons—Irregular appointment of father as guardian of minor sons—Ex parte decree—Suit by sons to recover their shares.* In a suit for sale on a mortgage executed by the father of a joint family governed by the *Mitakshara* the plaintiffs impleaded as defendants the father and his three sons, two of whom were minors. The plaintiffs named the father as guardian *ad litem* of the minors, but no steps were taken, as required by the rules of the High Court, to ascertain whether the father was willing to act as guardian. The father did not appear, and an *ex parte* decree was passed, in execution whereof the family property was sold. Subsequently, on attaining majority, the minor sons brought a suit for possession of their shares; alleged that the original debt was an immoral debt which they were not bound to discharge, and also they had not been legally represented in the previous suit. The Court of first instance having dismissed the suit without going into the merits, the lower Appellate Court made an order of remand. *Held*, that there had been a serious irregularity, if nothing worse in the appointment of the father as guardian *ad litem*, and as it was impossible to tell, without knowing to what extent the plaintiffs were in a position to establish their case regarding the immorality of the debt, how far the appointment of their father as guardian had prejudiced them, the order of remand was right. BAIJNATH RAI *v.* DHARAM DEO TIWARI (1916) . **I. L. R. 38 All. 315**

GUARDIAN AND MINOR.

See ARBITRATION.

I. L. R. 43 Calc. 290

See MORTGAGE . **I. L. R. 38 All. 92**

——— *Contract—Specific performance—Specific performance of a contract not favourable to minor refused.* The District Judge sanctioned the sale by the certificated guardian of a minor of a house belonging to the minor for a price of Rs. 1,300. There arose, however, some dispute about the drafting of the deed of sale and the purchase was not carried through. Meanwhile other offers were made for the property, and ultimately the District Judge directed that the house should be sold to one Abdullah for Rs. 2,000. *Held*, on suit brought by the person in whose favour the sale had originally been sanctioned, that the Court was in the circumstances justified in refusing to grant a decree for specific performance. *Chhitar Mal* v. *Jagan Nath Prasad, I. L. R. 29 All. 213*, referred to. IMAMI *v.* MUSAMMAT KALLO (1916).

I. L. R. 38 All. 433

GUARDIANS AND WARDS ACT (VIII OF 1890).

——— **ss. 2, 12, 21, 24 and 25**—*Mahomedan Law—Shafi, school of—Guardianship of minor son—Indian Majority Act (IX of 1875)—Habeas Corpus*

GUARDIANS AND WARDS ACT (VIII OF 1890)—*contd.*

——— **s. 2**—*concld.*

nature of. A father can apply under s. 25 of the Guardians and Wards Act (VIII of 1890) for the custody of his minor son though the minor had all along been in the custody of his grandmother but never in the custody of his father. *Per* SADASIVA AYYAR, J.—The word "custody" in all the three places where that word occurs in s. 25 (*1*) includes both actual and constructive custody of a minor. Under Mahomedan law, a minor continues to remain in the custody of his guardian till he attains the age of 18, notwithstanding (that under) the Shafi School to which he is subject, his personal emancipation would have taken place when he attained the age of 15 or when he attained puberty between the ages of 9 and 15. The word "guardian" in s. 21 includes the guardianship both of persons and property. *Reade v. Krishna, I. L. R. 9 Mad. 391*, followed. *Per* NAPIER, J.—The object of ss. 24 and 25 is to declare the right of the guardian of the person of a minor to the continuous custody of his person and to provide a machinery for enforcing it. The writ of *Habeas Corpus* proceeds on the fact of an illegal restraint and can have no application to cases where there is no question of restraint. IBRAHIM NACHI *v.* IBRAHIM SAHIB (1915) . **I. L. R. 39 Mad. 608**

——— **s. 7**—*Application for guardianship of property—Resistance to the guardianship order on the ground that the property was joint family property—Elaborate inquiries into the character of the property not competent—Summary nature of the inquiry.* In an application for guardianship of a minor's property under s. 7 of the Guardians and Wards Act (VIII of 1890), the applicant alleged that the property was the separate property of the minor's husband. The opponents resisted the application contending that the property was joint-family property which had survived to them. The Court conducted a lengthy inquiry into the character of the property, and having come to the conclusion that it was joint, rejected the application. The applicant having appealed: *Held*, reversing the order, inasmuch as the application was made on the footing and with the claim, that the minor was separately entitled to separate property the Court ought to appoint a guardian of the property of the minor, and leave it to him to institute suits for the recovery of the property. S. 7 of the Guardians and Wards Act (VIII of 1890) contemplates only a summary enquiry followed by an order made for the welfare of the minor. GURAPPA SHIVGENAPPA *v.* TAYAWA SHIDDAPPA (1916)

I. L. R. 40 Bom. 513

——— **ss. 12, 13, 17, 19, 24 and 25**—*Minor never in the custody of his father—Application by father for custody of his son under Guardians and Wards Act—Refusal of the District Court to make an order on the application—Remedy by way of suit—Jurisdiction of District Court.* One C, the maternal uncle of B, a minor, applied to the District

GUARDIANS AND WARDS ACT (VIII OF 1890)—*concld.*

——— **s. 12**—*concld.*

Court at Ahmedabad for the appointment of himself as guardian of the person and property of the minor in preference to A, the father of the minor. The Court made no order as to the guardianship of the minor's person by reason of s. 19 of the Guardians and Wards Act, 1890, but appointed the Deputy Nazir as the guardian of the minor's property. Subsequently the father who never had the custody of his minor son, applied under the Guardians and Wards Act, 1890, for the custody of the boy. The Joint Judge refused to make an order on the application and referred the father to a regular suit. On appeal to the High Court: *Held*, that the only remedy of the father was to file a suit for the custody of his son. *Sharifa v. Munekhan, I. L. R. 25 Bom. 574*, followed. *Held*, further, that the jurisdiction of the District Court was defined by the Guardians and Wards Act and that it had no inherent power to make orders with reference to minors which were not expressly conferred upon it by that Act. *Annie Besant v. Narayaniah, I. L. R. 38 Mad. 807*, followed. ACHRATLAL JEKISANDAS *v.* CHIMANLAL PARBHUDAS (1916) . **I. L. R. 40 Bom. 600**

——— **ss. 17 and 19**—*Guardianship of minor children—Father, marrying a second time, no disability.* Under s. 19 of the Guardians and Wards Act, the Court must be satisfied that the husband or father is unfit to be the guardian of his wife or child respectively before it can appoint another person as guardian. The fact of the father marrying a second time is no ground for depriving him of the guardianship of his minor children. *Bindo v. Sham Lal, I. L. R. 29 All. 210*, dissented from. AUDIAPPA v. NALLENDRANI (1915)

I. L. R. 39 Mad. 473

——— **ss. 34** (*d*), **45** (*b*)—*Guardian failing to pay full amount of purchase-money of property sold with permission, because purchaser retained a portion in discharge of old debt—Daily fine, order to pay, if legal.* Where a certificated guardian of minors obtained permission to sell a portion of their estate on the representation that the money (about Rs. 3,000) was wanted to repair their house, and submitted accounts showing that out of Rs. 5,000 obtained by the sale, Rs. 4,000 had been retained by the purchaser in payment of a sum of Rs. 4,000 which the guardian had borrowed from her to give the minors in marriage, and the Judge thereupon called upon the guardian to pay the said amount of Rs. 4,000 in Court within a specified time and directed that on failure to do so the guardian was to pay a fine of Rs. 5 per diem: *Held*, that the amount the guardian was called upon to pay was not an amount of balance due from the guardian as the same had not been paid to her, nor was it a balance due on accounts filed in compliance with a requisition under cl. (*d*) of s. 34 of the Guardians and Wards Act, and the order imposing a daily fine was *ultra vires*. NIKHRANNESSA BIBI, *Re.* (1915) . **20 C. W. N. 663**

GUARDIANSHIP.

See HINDU LAW—GUARDIANSHIPS.

———— **of minor children—**

See GUARDIANS AND WARDS ACT (VIII OF 1890), SS. 17, 19.

I. L. R. 39 Mad. 473

H

HABEAS CORPUS.

———— **nature of—**

See GUARDIANS AND WARDS ACT (VIII OF 1890), S. 2.

I. L. R. 39 Mad. 608

HEARSAY EVIDENCE.

See EVIDENCE ACT (I OF 1872), S. 33.

I. L. R. 39 Mad. 449

HEIR.

———— **to self acquired property of woman—**

See ALIYASANTANA LAW.

I. L. R. 39 Mad. 12

HIGH COURT.

———— **extraordinary civil jurisdiction of—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 115 . **I. L. R. 40 Bom. 86**

———— **revisional jurisdiction—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 115 **I. L. R. 40 Bom. 509**

HIGH COURT CRIMINAL SESSIONS.

See PERJURY **I. L. R. 43 Calc. 542**

HIGH COURT GENERAL RULES AND CIRCULAR ORDERS.

———— **Vol. I, Ch. XI, r. 45** (*e*).

See VAKALATNAMA.

I. L. R. 43 Calc. 884

HIGH COURT, JURISDICTION OF.

See DIVORCE ACT (IV OF 1869), SS. 3, 16, 37, 44. . **I. L. R. 40 Bom. 109**

See PERJURY **I. L. R. 43 Calc. 542**

See PRESS ACT (I OF 1910), SS. 3 (*1*), 4 (*1*), 17, 19, 20 AND 22.

I. L. R. 39 Mad. 1164

HIGH COURTS ACT (24 & 25 VIC. c. 104).

———— **s. 9—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 115 . **I. L. R. 40 Bom. 86**

HINDU CONVERTS.

———— **to Mahomedanism—**

See SUCCESSION . **L. R. 43 I. A. 35**

HINDU FAMILY.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 88.

I. L. R. 39 Mad. 831

HINDU LAW.

	COL.
ADOPTION	180
ALIENATION	184
ALIENATION BY WIDOW . .	185
COPARCENER	185
DAUGHTER'S ESTATE . . .	185
DEBT	186
ENDOWMENT	186
GIFT	187
GUARDIANSHIP	187
IMPARTIBLE ESTATE . . .	188
INFANT	189
INHERITANCE	189
JOINT FAMILY	189
JOINT-FAMILY PROPERTY . .	192
MAINTENANCE	192
MARRIAGE	193
MITAKSHARA	193
PARTITION	194
RELIGIOUS ENDOWMENT . .	196
REVERSIONER	198
STRIDHAN	198
SUCCESSION	200
WIDOW	201
WILL	202
WOMAN'S ESTATE . . .	207

HINDU LAW—ADOPTION.

1. ———— *Adoption by junior widow without consulting senior widow but with sapindas consent, invalidity of—Preferential right of senior widow to adopt.* An adoption made by a junior widow of a deceased Hindu purporting to be made with the consent of the sapindas, but without consulting the senior widow is invalid. *Kakerla Chukkamma* v. *Kakerla Punnamma, 28 Mad. L. J. 72,* followed. *Vellanki Venkata Krishna Rao* v. *Venkatarama Lakshmi, I. L. R. 1 Mad. 174,* referred to. *Per* WALLIS C. J.—In the absence of an express authority by the husband to any one of the widows, the senior widow has the preferential right to adopt with the consent of the sapindas. The senior widow is one of the kinsmen whom it is the duty of the junior widow to consult within the meaning of the rule enunciated in *The Ramnad Case, 12 Moo. I. A. 397.* RAJAH VENKATAPPA NAYANIM BAHADUR *v.* RENGA RAO (1915) **I. L. R. 39 Mad. 772**

2. ———— *Adoption—Consent of sapindas—Refusal of consent by nearest sapinda on personal grounds, improper—Consent of remoter sapindas—Adoption, validity of.* Where the nearest sapinda refused to give his consent to an adoption by a widow on the ground that he would forfeit the right to property which he

HINDU LAW—ADOPTION—*contd.*

would otherwise get, and the widow made the adoption with the consent of remoter sapindas: *Held*, that the refusal of the nearest sapinda was based on improper grounds and that the adoption with the consent of the remoter sapinda was valid. VENKATARAMA RAJU *v.* PAPAMMA (1914) **I. L. R. 39 Mad. 77**

3. ——— *Adoption—Divesting of estate on adoption—Property of the natural father vested exclusively in the son before adoption—After adoption the property remains in the natural family.* Under Hindu Law, when a boy is given in adoption, he loses all the rights he may have acquired to the property of his natural father including the right to property which has become exclusively vested in him before the date of his adoption. *Rajah Venkata Narasimha Appa Row* v. *Sri Rajah Rangayya Appa Row, I. L. R. 29 Mad. 437*, dissented from. DATTATRAYA SAKHARAM *v.* GOVIND SAMBHAJI (1916) **I. L. R. 40 Bom. 429**

4. ——— *Adoption—Will in favour of a grand-daughter—Simultaneous execution of adoption deed as well as will—Construction of documents—Adopted son's consent, binding effect of—Disposition good as a family arrangement.* One B died leaving him surviving his widow L and a predeceased son's daughter K (plaintiff). B, before his death, recommended L to adopt A his brother's son. L made the adoption by a deed, dated the 10th June 1895, and simultaneously executed a will in favour of K. On the strength of this will K claimed the properties in suit. The Subordinate Judge decreed K's suit holding that the will being made with the full consent and concurrence of A who was then major must take effect. On appeal the decree was reversed. On appeal to the High Court. *Held*, (i) that the adoption deed and the will must be read together, and that, so read, they constituted a single family arrangement. (ii) that the adopted son who was of full age having deliberately accepted the family arrangement and its advantages must be held to it. *Visalakshi Ammal* v. *Sivaramien, I. L. R. 27 Mad. 577*, referred to. (iii) that the disposition in favour of plaintiff was good not because it was a bequest made by L, but because it was a part of the single family arrangement which all parties accepted. KASHIBAI *v.* TATYA (1916) **. I. L. R. 40 Bom. 668**

5. ——— *Adoption by Brahmin—Dattahoma ceremony not performed—Adoption if valid—Adopter and adoptee of same gotra. Held*, on a review of authorities, that the *dattahoma* ceremony is not essential when the adopted boy is of the same *gotra* as the adopter, even amongst the twice-born classes. RETKI *v.* LAK PATI PUJARI (1914) . . **20 C. W. N. 19**

6. ——— *Authority to adopt, verbally given, before death—Proof—Relevancy of will, which contained no directions for adoption, made two months before death, in estimating probabilities—Probable change of intentions—Witnesses,*

HINDU LAW—ADOPTION—*contd.*

testimony of, opinion of Trial Judge, value of discrepancy in witnesses' statements, consideration of—Non-citation by either side of witness who went over from one side to the other—Case raised in first Court, not urged in appeal, if should be allowed to be raised on further appeal. R, a Hindu mahajan of means, died on 11th February 1896, leaving him surviving a widow and a daughter. He had been suffering from pthisis for some time. Two months before his death he executed a will, by which he made a very modest provision for his daughter, and gave his wife a life-interest in the bulk of his properties (which, however, she was liable to forfeit if she behaved contrary to the injunctions of the will). The testator had been hopeful that a son might be born to him, and the son, if born, was, under the will, to be the "sole executor, donee and owner." The will contained no power to adopt a son. Seven years after the death of R, his widow adopted an infant son of R's nephew *J*, born after R's death. By his will R had expressly excluded J, on account of his profligacy and irreligion, from participation in his funeral ceremonies, preferring for that purpose his sister's son B, in whom he had confidence and who lived in the same house with him and whom he appointed one of his executors. The authority for the adoption was alleged to have been given by R, shortly before his death (when he appeared to have become aware of the serious nature of his illness) verbally to his wife, in the presence of several respectable witnesses, most of whom deposed that R had expressly directed a son of J (should one be born) to be taken in adoption. The Trial Judge had held the alleged authority to adopt to have been proved. But the High Court on appeal reversed that finding, relying chiefly upon the contrary inferences regarding probabilities arising from the language of the will and discrepancies in the depositions of the several witnesses who spoke to R's giving the authority to adopt. *Held*. by the Judicial Committee, that the probabilities were not adverse to the view that the testator might have modified his original intentions as expressed in his will which was executed before he came to realise how short his life was, and the balance of testimony being distinctly in favour of the story that the authority to adopt had been given, not only had the Trial Court not approached the case with bias but had taken a fairer and less one-sided view of the facts than that which prevailed in the High Court. That the view of the Judge who tried the case and saw nearly all the witnesses on a question of evidence such as this was obviously entitled to great weight. That such discrepancies as there were might well be accounted for by the fact that the conversation which the witnesses described had taken place some 13 years previously. At the trial the widow of R, who first came forward to support the adoption, appeared later on to have gone over to the opposite camp, *viz.*, of B, who was opposing the adoption: *Held*, that the omission by both parties to cite her as a witness was in

HINDU LAW—ADOPTION—*concld.*

the circumstances justifiable. The question whether assuming authority to adopt to have been given, the adoption of J's son would make him a son of the testator capable of taking under the terms of the will was raised in the Trial Court and decided in favour of the adopted son and it was not argued in the Appeal Court. The Judicial Committee in the circumstances did not allow the question to be raised before them. ADWAITYA PRASAD *v.* BALDEO DASS (1916) **20 C. W. N. 650**

7. ——————————— *Dayabhaga—Kayasthas, in Bengal, Sudras—Adoption, amongst Kayasthas, religious ceremonies if essential—Religious ceremonies postponed after actual giving and taking—Adoption during pollution through birth of agnate—Validity—Afterborn natural son of Sudra, and adopted son, shares of, if equal—Agreement by adoptive father to give equal share, if valid—Properties held by adoptive father as shebait, adopted son, if may claim to hold as shebait jointly with afterborn son—Pittrikrityas, and Debakrityas—Proof that property has been endowed as debutter—Dattaka Chandrika, authority of.* Kayasthas, according to the law prevalent in Bengal, are considered as Sudras. No religious ceremony is necessary for an adoption amongst Kayasthas, mere giving and taking of a son being sufficient to give it validity. The *putresthi jag* and *namkaran* not being essential ceremonies in an adoption between Sudras, the fact that they took place subsequently to the giving and taking did not affect the validity of the adoption. Pollution on account of the birth of a relative does not vitiate an adoption. It is only a bar to religious acts and renders religious ceremonies inefficacious; but gift and acceptance of a son are secular acts. *Santappayya* v. *Rangappayya, I. L. R. 13 Mad. 397, 398,* followed. Such pollution results from the knowledge of the fact of birth. In laying down the rule that the adopted son of a Sudra shares the inheritance equally with the afterborn natural son, the Dattaka Chandrika has in no way deviated from the *Smritis,* and the rule, which has been accepted as correct by both the Madras and Calcutta High Courts, should not be departed from. An *ekrarpatra* of the adoptive father covenanting that an afterborn natural son of his shall not be entitled to claim a larger share but will divide the inheritance equally with the son he was adopting, is valid and operative. *Surendra Keshab Roy* v. *Doorga Soondary Dassee, I. L. R. 19 Calc. 513, 536,* and *Bhala Nahana* v. *Prabhu Hari, I. L. R. 2 Bom. 67,* referred to. It is now settled law that, as regards inheritance, the adopted son holds in all respects the same position as an *aurasa* son except in some special matters. An *aurasa* son has a superior right in respect of *pitri-matri krityas* but there is no such preference in respect of *shevas* or *deva-krityas. Held,* therefore, that an adopted son of a Sudra was entitled to inherit *debutter* properties in the right of *shebaitship,* jointly with an afterborn natural son. ASITA MOHON GHOSH MOULIK *v.* NIRODE MOHON GHOSH MOULIK (1916) . . **20 C. W. N. 901**

HINDU LAW—ALIENATION.

See HINDU LAW—ALIENATION BY WIDOW.

——————————— *Alienation by widow—Legal necessity — Spiritual welfare of her husband—To what extent alienation permissible—Recital in a deed, by itself not conclusive evidence.* Where a deed, by a limited owner with qualified power of alienation, is impeached, the test is whether the purpose for which the alienation was made was proper or legitimate. *Collector of Masulipatam* v. *Cavaly Vencata, 8 Moo. I. A. 529,* referred to. Necessity is only one of the phases of the test of propriety. *Raj Lukhee* v. *Gokool Chunder, 13 Moo. I. A. 209, Sham Sunder Lal* v. *Achhan Kunwar, I. L. R. 21 All. 71; L. R. 25 I. A. 183, Bejoy Gopal Mukerji* v. *Girindra Nath Mukerji, I. L. R. 41 Calc. 793,* referred to. The widow has a larger power of disposition for religious or charitable purposes or for purposes which are supposed to conduce to the spiritual welfare of her husband than what she possesses for purely worldly purposes. An exhaustive enumeration of these religious or charitable purposes is neither possible nor necessary *Cossinaut Bysack* v. *Hurrosoondry Dossee, 2 Morley's Digest 198,* referred to. This being a question purely of Hindu law, great care must be taken in coming to a decision upon that subject in order to prevent English Judges being warped by impressions made upon their minds in consequence of their habitual application of English law and the nature of English decision to which they are accustomed and to consider in what way a Hindu Court of Justice would have decided the point. The true rule appears to be that there is a distinction between legal necessity for worldly purposes on the one hand, and the promotion of the spiritual welfare of the deceased on the other hand, and that, within proper limits, the widow may alienate her husband's property for the performance of religious acts which are supposed to conduce to his spiritual benefit *Mukhoda* v. *Kulliani, 1 Mac. Sel. Rep. 82, Ram Chunder Surma* v. *Gungagovind, 4 Mac. Sel. Rep. 147, Kartick Chunder* v. *Gour Mohun, 1 W. R. 48, Runjeet Ram* v. *Mahomed Waris, 21 W. R. 49, Ram Kaval Singh* v. *Ram Kishore Das, I. L. R. 22 Calc. 506, Churaman Sahu* v. *Gopi Sahu, I. L. R. 37 Calc. 1, Harmange* v. *Ram Gopal, 17 C. W. N. 782, Rama* v. *Ranga, I. L. R. 8 Mad. 552, Lakhsminarayana* v. *Dasu, I. L. R. 11 Mad. 288, Vuppuluri* v. *Garimilla, I. L. R. 34 Mad. 288, Puran Dai* v. *Jai Narain, I. L. R. 4 All. 482, Kupur* v. *Sebak Ram, 1 Bor. 405, Jogjiban* v. *Deoshankar, 1 Bor. 394, Chunilala* v. *Jussoo, 1 Bor. 55,* referred to. A gift of a moderate portion of the property of her husband by the widow with a view to his spiritual benefit is valid. Whether the alienation covers a reasonable portion of the property of the husband of the lady is a question which must be determined with reference to the circumstances of each particular disposition. *Ram Chunder Surma* v. *Gungagovind, 4 Mac. Sel. Rep. 147, Churaman* v. *Gopi Sahu, I. L. R. 37 Calc. 1,* referred to. Recitals in a deed are not by themselves conclusive evidence

HINDU LAW—ALIENATION—*concld.*

of their truth and the facts alleged should be proved *aliunde*. *Brij Lal* v. *Inda Kunwar*, *I. L. R. 36 All. 187*, referred to. KHUB LAL SINGH *v.* AJODHYA MISSER (1915) **I. L. R. 43 Calc. 574**

HINDU LAW—ALIENATION BY WIDOW.

——— *Legal necessity—Onus of proof of legal necessity as affected by lapse of time—Proof of custom of succession to estate—Limitation—Adverse possession—Res judicata.* On this appeal their Lordships of the Judicial Committee affirmed the decision of the High Court which is reported in I. L. R. 38 Calc. at page 725. RAVANESHWAR PRASAD SINGH *v.* CHANDI PRASAD SINGH (1915) . . **I. L. R. 43 Calc. 417**

HINDU LAW—COPARCENER.

——— *Decree against one co-parcener—Right to attach and sell the interest of another co-parcener—Declaration, suit for.* The plaintiff sued for a declaration that the property of the defendant was liable to attachment and sale in execution of a decree obtained by the plaintiff in another suit (to which this defendant was not a party) against the defendant's undivided brother for money borrowed on the defendant's account. The declaration having been granted, the defendant appealed: *Held*, that where the stage of sale had not been reached, there was no reason for assuming jurisdiction to dispose of property belonging to one who was no party to the suit and was not a representative of the judgment-debtor. LAXMAN NILKANT *v.* VINAYAK KESHAV (1915) . . **I. L. R. 40 Bom. 329**

HINDU LAW—DAUGHTER'S ESTATE.

——— *Suit by unmarried daughter for possession of her father's property—Death of plaintiff—Right of married daughters to continue the litigation.* A separated Hindu died leaving him surviving a widow and four daughters, three married and one unmarried. After the death of her mother, the unmarried daughter sued to recover possession of her father's estate, naming her three married sisters as *pro formâ* defendants. The plaintiff, however, died during the pendency of the suit. The three married daughters were then on their application transferred from the array of defendants to that of plaintiffs. Nevertheless the suit was dismissed upon the ground that it had abated by reason of the death of the original plaintiff. *Held*, that the suit should not have been dismissed. The original plaintiff represented the estate, and her sisters were entitled to continue the litigation which she had commenced. *Mahadeo Singh* v. *Sheo Karan Singh*, *I. L. R. 35 All. 481*, and *Venkata Narayana Pillai* v. *Subbammal*, *I. L. R. 38 Mad. 406*, referred to. *Balak Puri* v. *Durga*, *I. L. R. 30 All. 49*, not followed. JADUBANSI KUNWAR *v.* MAHPAL SINGH (1915) **I. L. R. 38 All. 111**

HINDU LAW—DEBT.

——— *Son's liability to pay father's debts—Debts contracted in trade carried on against Government Servants' Conduct Rules, 1904.* Sons cannot escape liability for payment of the debts of their father contracted in a trade carried on by him in contravention of Government Servants' Conduct Rules on the ground that the conduct of their father in contracting debts in such trade was *avyavahar*. RAMKRISHNA TRIMBAK *v.* NARAYAN (1915) **I. L. R. 40 Bom. 126**

HINDU LAW—ENDOWMENT.

See HINDU LAW—RELIGIOUS ENDOWMENT.

——— *Nature, object, custom and practice of muth or asthal—Right of succession as Mahant, custom of—Mahant appointing a married man and father of children to be Mahant—Abdication by Mahant of his functions—Right of his senior chela to succeed him.* In this appeal the question was whether the appellant who claimed to the senior *chela* of the first respondent, the late *mahant* who had retired, or the second respondent who claimed to have been appointed by him, was entitled to succeed him as the *mahant* of the Patepur *asthal* or *muth*. On this question their Lordships of the Judicial Committee *held* (reversing on the evidence the decision of the High Court) in favour of the appellant, mainly on the ground that the second respondent was a married man who had not on initiation renounced his worldly ties and the begetting of children, and was not an ascetic or *bairagi chela*, but was disqualified from holding the office of *mahant*. As to the nature, object, custom, and practice of such a religious institution. *Sammantha Pandara* v. *Sellapa Chetti*, *I. L. R. 2 Mad. 175*, was referred to. The question as to who had the right to succeed to the office of *mahant* depended, according to the well-known rule in India, not on the general customary law, but upon the custom and usage of the particular *muth*. *Mahant Ramanooj Doss* v. *Mahant Debraj Doss*, *6 S. D. A.* (*Beng.*) *262*, *Greedharee Doss* v. *Nundkissore Doss*, *11 Moo. I. A. 405*, *Muttu Ramalinga Setupati* v. *Perianayagum Pillai*, *L. R. 1 I. A. 209*, and *Raja Vurmah Valia* v. *Ravi Vurmah Kunhi Kutti*, *I. L. R. 1 Mad. 235*; *L. R. 4 I. A. 76*, referred to. On the question as to the second respondent being a married man, on which the Courts below had differed, their Lordships were of opinion that the verdict given by the Subordinate Judge who had the advantage of seeing and hearing the witnesses, could not be lightly set aside, especially as that Judge was also presumably acquainted with the manners and customs of the people among whom such a transaction was alleged to have occurred. There were, moreover, no sufficient grounds stated by the High Court for disturbing that verdict. Having themselves investigated the facts, their Lordships held that the rule—of attaching weight to the opinion of the Judge of first instance—could not safely be departed from in the present case. Though the deeds appointing the second

HINDU LAW—ENDOWMENT—*concld.*

and third respondents to be successively *mahants* were ineffective, the former being not competent to hold the office, and the latter having died, the first respondent could not, in their Lordships' opinion, be considered to be still the *mahant*. He had abdicated all his functions, and had himself retired from the office. A *mahant* was not only a spiritual preceptor, but a trustee in respect of the *asthal*. He had by appointing a married man and father of children to the office consented to a violation of those vows of asceticism and celibacy which it was his duty as a trustee to maintain and protect. His abdication must therefore be accepted as a fact in the case. A vacancy in the office had therefore been created which under the circumstances would devolve upon the appellant who was found to be senior *chela* and was not alleged to be incompetent to be *mahant*. RAM PRAKASH DAS *v.* ANAND DAS (1916) . . . **I. L. R. 43 Calc. 707**

HINDU LAW—GIFT.

——————— *Gift to the illegitimate son of an undivided collateral co-parcener, not ancestral property as between the donee and his son.* Property given for maintenance to the illegitimate son of an undivided deceased collateral co-parcener is not "ancestral property" of the illegitimate son in which the son of that illegitimate son gets a right by birth. *Nagalinga Pillai* v. *Ramachendra Teven, I. L. R. 24 Mad. 429,* and *Hazarimal Babu* v. *Abaninath, 17 C. L. J. 38,* distinguished. KRISHNASWAMI NAIDU *v.* SEETHALAKSHMI AMMAL (1915) **I. L. R. 39 Mad. 1029**

HINDU LAW—GUARDIANSHIP.

——————— *Mother of infants intending to become and make her boys Christian—Fitness to be Guardian—Bad character not proved—Undertaking not to baptise children—Associating Hindu uncle in guardianship.* D, the uncle of two fatherless Hindu boys aged 7 and 5 years respectively, applied to be appointed their guardian, alleging that their Mother S, was a woman of bad moral character and had made up her mind to adopt the Christian religion and to get her sons baptised. The first allegation was not established. *Held,* that the charge of immorality, though not proved, made it impossible for S to live with the family who made the charge must be taken into consideration in passing orders on the petition. That S's expressing a desire to become a Christian or even becoming one would in itself be no ground for removing her from the guardianship, provided she was in a position to satisfy the Court that she was able to carry out the obligations which the law imposed upon her of bringing up her children in the faith of her husband, whatever the faith she herself might adopt. It was proved that she had expressed her intention to convert her sons to Christianity, but her counsel having given an undertaking that she would not baptise her children, the Court passed order appointing her guardian of the minors' person and property, associating in the

HINDU LAW—GUARDIANSHIP—*concld.*

guardianship the uncle D, who would as such guardian be in a position to set that S's undertaking to bring up the children in the Hindu faith was properly carried out. The older boy was ordered to be placed at once as a boarder in a Hindu hostel which, though attached to the Church Missionary Society, was conducted in conformity with Hindu religious views, the younger boy being also ordered to be similarly placed when he should attain the age of 7 years until which time he was to live with S, liberty being given to D to apply to the District Judge whenever a breach of the undertaking was apprehended. DWIJAPADA KARMAKAR *v.* MISS BAILEAU (1915) **20 C. W. N. 608**

HINDU LAW—IMPARTIBLE ESTATE.

——————— *Impartible estate—Succession—Primogeniture—Estate once in the possession of a family regranted after loss of possession to one member of the same family—Construction of grant.* The question whether a certain estate is impartible or not is one of fact in each case. Where an impartible estate is lost to a certain family and on the representation of a member of that family the Government puts him into possession making a grant in his favour without any special term or condition in the grant, the property so restored would be joint family property in the hands of the member of the family to whom the grant is made. When the Government makes a grant of an estate it can determine the nature of the grant; but in the absence of specific terms in the grant the surrounding circumstances must not be ignored. The normal constitution of Hindu family is union. And it is the very essence of an impartible estate that there is no legal right to insist on partition. The estate is enjoyed by the whole family through the occupant of the *gaddi*. *Held,* that, when an impartible estate passes by survivorship from one line of descent to another, it devolves not on the co-parcener nearest in blood, but on the nearest co-parcener of the senior line. *Held,* further, that if the descendants of a junior member of an impartible estate partition the property given to their ancestor for maintenance, it is not conclusive on the point as to whether the estate has ceased to be joint for the purpose of finding out a successor to the *gaddi*. *Kachi Yuva Rangappa Kalakka Thola Udayar* v. *Kachi Kalayana Rangappa Kalakka Thola Udayar, I. L. R. 28 Mad. 508, Katama Natchiar* v. *The Raja of Shivagunga, 9 Moo. I. A. 543, Doorga Persad Singh* v. *Doorga Konwari, I. L. R. 4 Calc. 190, Stree Rajah Yanumula Venkayamah* v. *Stree Rajah Yanumula Boochia, Venkondora, 13 Moo. I. A. 333, Sartaj Kuari* v. *Deoraj Kuari, I. L. R. 10 All. 272, Tara Kumari* v. *Chaturbhuj Narayan Singh, I. L. R. 42 Calc. 1179, Bachoo Harkisondas* v. *Mankorebai, I. L. R. 29 Bom. 51, Raja Rup Singh* v. *Rani Baisni, I. L. R. 7 All. 1,* and *Nayaganti Achammagaru* v. *Venkatachalapati Nayanivaru, I. L. R. 4 Mad. 250,* referred to. *Sri Raja Satrucharla Jagannadha Raju* v. *Sri Raja Satrucharla Rama-*

HINDU LAW—IMPARTIBLE ESTATE—*concld.*

bhadra Razu, I. L. R. 14 Mad. 237, Venkatarayadu v. *Venkataramayya, I. L. R. 15 Mad. 284, Venkata Narasimha Appa Row* v. *Parthasarathy Appa Row, L. R. 41 I. A. 51,* and *Brij Indar Bahadur Singh* v. *Ranee Jankee Koer, L. R. 5 I. A. 1,* distinguished. BAIJNATH PRASAD SINGH *v.* TEJ BALI SINGH (1916)
I. L. R. 38 All. 590

HINDU LAW—INFANT.

——————— *Power of manager to alienate property—"Benefit" of estate as justifying alienation—Speculative development of minor's estate, if for benefit.* The rule laid down by the Judicial Committee in *Hanooman Pershad Pandey* v. *Munraj Koonwar, 5 Moo. I. A. 373, 423,* is not restricted to cases of mortgage or other forms of partial alienation, nor is it restricted in its application to cases of necessity alone, for a "benefit" of the estate is there differentiated from the "need" of the estate as a circumstance justifying alienation. But mere increase in the immediate income of the minor or of his estate does not necessarily justify the inference that the particular transaction is for the benefit of the estate within the meaning of the rule which could not have been intended to include cases of speculative development of estates of minors. KRISHNA CHANDRA CHOUDHURY *v.* RATAN RAM PAL (1915)
20 C. W. N. 645

HINDU LAW—INHERITANCE.

——————— *Sudras—Inheritance—Illegitimate son—Extent of share.* Among Sudras an illegitimate son of a concubine stands on the same level as to inheritance as the *dasi putra,* and the extent of his share in competition with a legitimate daughter would be one-half of the share taken by the daughter, that is, one-third of the whole estate. GANGABAI PEERAPPA *v.* BANDU (1915) . . **I. L. R. 40 Bom. 369**

HINDU LAW—JOINT FAMILY.

See HINDU LAW—JOINT FAMILY PROPERTY.

1. ——————— *Alienation of a share of a member of a joint Hindu family—No right to alienee for mesne profits from the date of alienation till suit for partition.* A purchaser of the undivided share of a member of a joint Hindu family does not thereby become a tenant in common with the other members and hence he is not entitled to any mesne profits in respect of his share for the period between the date of his purchase and the date of his suit for partition. *Nanjaya Mudali* v. *Shanmug Mudali, 26 Mad. L. J. 576,* followed. The *obiter dicta* in *Aiyyagiri Venkataramayya* v. *Aiyyajiri, Ramayya, I. L. R. 25 Mad. 690, Chinnu Pillai* v. *Kalimuthu Chetti, I. L. R. 35 Mad. 47,* and *Subba Row* v. *Ananthanarayana Ayyar, 23 Mad. L. J. 64,* disapproved and not followed. MAHARAJA OF BOBBILI *v.* VENKATARAMANJULU NAIDU (1914).
I. L. R. 39 Mad. 265

HINDU LAW—JOINT FAMILY—*contd.*

2. ——————— *Father's debt, liability of son to pay—Mortgage by father, not proved immoral—Decree against father and sons, form of—Consideration proved—Lender if bound to prove application of money as stated in bond.* If the consideration for the mortgage was received by the mortgagor, the mortgagee cannot be held inoperative merely because the mortgagee has failed to prove that the money was applied as stated in the mortgage bond. *Kishun Pershad Choudhury* v. *Tipan Pershad Singh, I. L. R. 34 Calc. 735 :* s. c. *11 C.W. N. 613,* followed. The mortgage being one executed by a Mitakshara father, and the sons having failed to show that the loan was taken for immoral purposes, a decree was passed in the form it was made in *Kishun Pershad* v. *Tipan Pershad, I. L. R. 34 Calc. 735 :* s. c. *11 C. W. N. 613, e.g.,* mortgage decree against the share of the father, and if the sale of that share was insufficient to satisfy the debt, interest and costs, balance to be realised by sale of the son's shares and interest in the ancestral property so far as necessary—six months' time being allowed for redemption. KRISHNA PRASAD *v.* RAMPERSHAD SING (1916) . **20 C. W. N. 508**

3. ——————— *Joint family—Partition, suit for, by one member, whether effects separation.* A member of a joint Hindu family becomes separated from the other members by the fact of suing them for partition. *Suraj Narain* v. *Iqbal Narain, I. L. R. 35 All. 80, 87,* followed. SOUNDARARAJAN *v.* ARUNACHALAM CHETTY (1915) . **I. L. R. 39 Mad. 159**

4. ——————— *Son's liability to pay father's debt—Mortgage by Mitakshara father—Son, though of age, not a party to the deed—His liability—Moral obligation to pay father's debts, unless incurred for immoral purposes—Legal proof of immoral purposes.* Liability on the part of a son to pay a father's debt arises from moral and religious duty and obligation and this is so even though the debt is not incurred for the benefit of the individual or for the estate. A son can only exempt himself from liability if he can establish that the father was guilty of applying the money for some immoral purpose. Although there need not be any direct proof that the money was raised to be spent on any particular person, yet one must be reasonably satisfied that the father was a man of vicious, extravagant and lustful habits and that he raised the money for the purpose of applying it for the immoral purpose. In some way by reasonable legal proof it must be shewn that there is a connection with the debt and the immoral purpose. *Chintamanrav Mehendale* v. *Kashinath, I. L. R. 14 Bom. 320,* and *Dattatraya Vishnu* v. *Vishnu Narayan, I. L. R. 36 Bom. 68,* referred to. To be liable on a mortgage executed by the father for a purpose not proved to be immoral, it is not necessary for the adult sons to be parties to the bond. The case of *Upooroop Tewary* v. *Lalla Bandhjee Sahay, I. L. R. 6 Calc. 749,* seems to have been overruled if not distinctly qualified by the later case, *Baso-*

HINDU LAW—JOINT FAMILY—*contd.*

Kooer v. *Hurry Das, I. L. R. 9 Calc. 495.* BHAGAT MAL SAHU *v.* ABDUL KARIM (1916)
20 C. W. N. 797

5. ——— *Mitakshara law—Allegation of separation by one member of joint family—Expression of intention to hold share separately followed by suit for partition—Unequivocal and clearly expressed intention—"Separation" as distinct from "division of shares of property."* In this case their Lordships of the Judicial Committee *held*, on the facts, that the conduct of the plaintiff, a member of a joint Hindu family governed by the Mitakshara law, in indicating by a notice in a registered letter his intention to separate himself and enjoy his share in severalty, coupled with a suit for partition was as "unequivocal" and "clearly expressed" an intention as could be made, and that it amounted to a separation with all its legal consequences. The rule of law applicable to cases of separation from the joint undivided family laid down in *Suraj Narain* v. *Iqbal Narain, I. L. R. 35 All. 80; L. R. 40 I. A. 40*, followed. Nowhere in the Mitakshara is it stated that agreement between all the coparceners is essential to the disruption of the joint status, or that the severance of rights can only be brought about by the actual division and distribution of the property held jointly. On the other hand, numerous authorities on the subject leave no room for doubt that "separation", which means the severance of the status of jointness, is a matter of individual volition. Separation from the joint family involving the severance of the joint status so far as the separating member is concerned, with all the legal consequences resulting therefrom, is quite distinct from the *de facto* division into specific shares of the property held until then jointly. One is a matter of individual decision, the desire on the part of any one member to severe himself from the joint family and to enjoy the hitherto undefined or unspecified share separately from the others without being subject to the obligations which arise from the joint status; whilst the other is the natural resultant from his decision, the division and separation of his share, which may be arrived at either by private agreement among the parties, or on failure of that by the intervention of the Court. Once the decision has been unequivocally expressed and clearly intimated to his co-sharers, his right to obtain and possess the share to which he admittedly has a title is unimpeachable: neither the co-sharers can question it, nor can the Court examine his conscience to find out whether his reasons for separation were well founded or sufficient: the Court has simply to give effect to his right to have his share allocated separately from the others. *Madho Parshad* v. *Mehrban Singh, I. L. R. 18 Calc. 157; L. R. 17 I. A. 194, Deo Bunsee Koer* v. *Dwarkanath, 10 W. R. 273, Appovier* v. *Rama Subha Aiyan, 11 Moo. I. A. 75, Joy Narayan Giri* v. *Girish Chunder Myti, I. L. R. 4 Calc. 434, L. R. 5 I. A. 223*, and *Vato Koer* v. *Rawshun Singh, 8 W. R. 82*, referred to. GIRIJA BAI *v.* SADASHIV DHUNDIRAJ (1916) . **I. L. R. 43 Calc. 1031**

HINDU LAW—JOINT FAMILY—*concld.*

HINDU LAW—JOINT FAMILY PROPERTY.

——— *Sale by father during minority of son—Suit by son for cancellation of sale—Limitation—Limitation Act (XV of 1877), Sch. II, Art. 126.* A Hindu who at the time had a minor son, sold certain joint property in 1887. The sale was pre-empted and part of the property was subsequently transferred by one of the pre-emptors. The vendor's son attained majority in 1895. More than three years after 1895 three sons were born to him and in 1913 the father and the sons sued for cancellation of the sale-deed of 1881. *Held*, that the suit was barred by limitation, inasmuch as the title of the son of the original vendor became barred in 1898. The property ceased to be joint family property and the subsequently born grandsons were not in a position to dispute the sale. LACHMI NARAIN *v.* KISHAN KISHORE CHAND (1915)
I. L. R. 38 All. 126

HINDU LAW—MAINTENANCE.

——— *Impartible zamindari—Maintenance of junior members—Basis of the right—Coparcenary right or community of interest by birth not the basis—Relationship to holder of the zamindari, necessary—Provision for maintenance—Agreement with junior member, construction of—Adoption by zamindar—Subsequent bequest of zamindari—Suit for maintenance against legatee—Denial of relationship with legatee—Suit, not maintainable.* The plaintiff's father was adopted by the zamindar of Pittapur who died in 1890 leaving a will bequeathing all his properties including the zamindari which is an impartible estate, to the defendant who claimed also to be the natural son of the testator. The late zamindar had entered into an agreement with the plaintiff's father in 1882 whereby he agreed to pay him Rs. 1,500 a month and a lump sum of Rs. 6,000 a year. The will confirmed that arrangement. The plaintiff's father sued to recover the zamindari from the defendant, denying that the latter was the natural son of the late zamindar and also impugning the validity of the will. The suit was finally dismissed by the Privy Council on the ground that the will was valid. The plaintiff brought the present suit to recover maintenance from the defendant from 1902 when he ceased to be maintained by his father. The plaintiff did not admit that the defendant was the natural son of the late zamindar or that he and the defendant were members of an undivided family. The defendant contended that a junior member of the family of the holder of an impartible zamindari was not entitled to claim maintenance from the holder, and that the suit was not maintainable by reason of the agreement with plaintiff's father and the will of the late zamindar and on the ground that the plaintiff did not claim any maintenance as a member of the defendant's family. *Held*, that the arrangement made by the

HINDU LAW—MAINTENANCE—*concld.*

late zamindar with the plaintiff's father was not a provision for the maintenance of the latter and all his descendants, and did not operate to bar the plaintiff's claim. A junior member of the family of the holder of an impartible zamindari is entitled to maintenance only on account of his relationship to the holder and not on account of any coparcenary interest in the property or community of interest therein acquired by birth. *Held* (on the facts of the case), that as the plaintiff did not advance any claim based on relationship but refused to admit any relationship with the defendant, his claim for maintenance could not be sustained. That, as there was no community of interest in the property, it was not burdened with his claims in the hands of the defendant who was the legatee under the will. SRI RAJAH RAMA ROW *v.* RAJAH OF PITTAPUR (1915) . . . **I. L. R. 39 Mad. 396**

HINDU LAW—MARRIAGE.

——————— *Marriage of Hindu girl contracted by maternal uncle in the presence of paternal relatives—Injunction obtained by disqualified paternal relative to stay the marriage without reasonable and probable cause—Maintainability of suit for damages.* According to Hindu Law so long as there are competent paternal relatives in existence, the maternal relatives of a girl have no authority to give her in marriage; but in cases where the paternal relatives refuse to act or have disqualified themselves from acting, the maternal relatives acquire authority to contract marriage on behalf of the girl. A Hindu girl who was living with her paternal aunt and paternal uncle was made over to her maternal uncle as the result of an agreement come to between the parties. Subsequently the paternal aunt applied to be appointed guardian of the person of the minor, which application was dismissed. After this the maternal uncle of the girl arranged for the marriage of the girl with a certain person. The paternal aunt then obtained a temporary injunction and got the wedding put off. The marriage, however, was accomplished with the person selected by the maternal uncle. The maternal uncle brought a suit to recover damages for the loss caused to him by the wrongful issue of the injunction and the postponement of the wedding. *Held*, that under the circumstances of the case the maternal uncle was competent to enter into a contract of marriage on behalf of the girl, and a suit for damages lay. *Kasturi* v. *Chiranji Lal, I. L. R. 35 All. 265*, referred to. KASTURI v. PANNA LAL (1916)
I. L. R. 38 All. 520

HINDU LAW—MITAKSHARA.

——————— *Vyavahara Mayukha —Hindus in Mahad governed by Mitakshara.* In the town of Mahad in the Kolaba District Hindus are governed by the Mitakshara and not by the Vyavahara Mayukha. NARHAR DAMODAR *v.* BHAU MORESHWAR (1916) . **I. L. R. 40 Bom. 621**

HINDU LAW—PARTITION.

1. ——————— *Mitakshara—Joint Family—Karta—Form of account to be directed against the karta on a partition.* In an ordinary suit for partition of joint family property in the absence of fraud or other improper conduct, the only account the *karta* is liable for is as to the existing state of the property divisible, and the enquiry directed by the Court must be in the manner usually adopted to discover what in fact the property now consists of. *Chuckun Lall Singh* v. *Pooran Chunder Singh, 9 W. R. 483, Konerrav* v. *Gurrav, I. L. R. 5 Bom. 589, Raja Setrucherla Ramabhadra* v. *Raja Setrucherla Virabhadra Suryanarayana, I. L. R. 22 Mad. 470, L. R. 26 I. A. 167, Narayan bin Babaji* v. *Nathaji Durgaji Marwadi, I. L. R. 28 Bom. 201, Balakrishna Iyer* v. *Muthusami Iyer, I. L. R. 32 Mad. 271*, and *Shookmoy Chandra Das* v. *Monoharri Dassi, I. L. R. 11 Calc. 684; L. R. 12 I. A. 103*, referred to. *Obhoy Chundra Roy Chowdhry* v. *Pearee Mohun Gooho, 13 W. R. (F. B.) 75; 5 B. L. R. 347*, and *Damodardas Maneklal* v. *Uttamram Maneklal, I. L. R. 17 Bom. 271*, explained. PARMESHWAR DUBE *v.* GOBIND DUBE (1915)
I. L. R. 43 Calc. 459

2. ——————— *Right to partition —Partition between co-owners—Reversionary interest—Administrator's power to transfer property—Permanent leases—Probate and Administration Act (V of 1881), s. 90.* Where plaintiffs in a suit for partition were in joint possession of certain property with the defendants as co-sharers under leases which purported to be permanent leases granted to them under an arrangement sanctioned by the Court, and where the only person at the time of the suit interested in challenging the plaintiffs' right was a party to the suit and did not contest the suit:—*Held*, that the plaintiffs were entitled to partition and the fact that the partition would have to be set aside if the reversioner on coming into possession of the property succeeded in a suit for setting aside the leases, was not sufficient ground for refusing the plaintiffs the right to partition. *Sundar* v. *Parbati, I. L. R. 12 All. 51; L. R. 16 I. A. 186*, and *Bhagwat Sahai* v. *Bipin Behari Mitter, I. L. R. 37 Calc. 918; L. R. 37, I. A. 198*, followed. SALIMULLAH *v.* PROBHAT CHANDRA SEN (1916)
I. L. R. 43 Calc. 1118

3. ——————— *Mitakshara —Partition—Share of step-mother.* Under the Mitakshara law a step-mother is entitled, upon partition of the joint family property, to share equal to that of a son. *Hemangini Dassi* v. *Kedarnath Kundu Chowdhry, I. L. R. 16 Calc. 758*, distinguished, *Mathura Prasad* v. *Deoka, (1890 All. Weekly Notes, 124*, followed. HAR NARAIN *v.* BISHAMBHAR NATH (1915).
I. L. R. 38 All. 83

4. ——————— *Partition—Marriage of co-parcener—Provision for expenses of Marriage at partition—Expenses incurred subsequent to suit but before decree —Anticipatory provi-*

HINDU LAW—PARTITION—*contd.*

sion for future marriage, right for—Decree in partition suit—Gift by co-parcener of lands, less than his share—Validity of—Estoppel. An unmarried co-parcener is not entitled to have an anticipatory provision made for the expenses of his future marriage at partition. *Srinivasa* v. *Thiruvengathiengar, I. L. R. 38 Mad. 556,* dissented from. Where the expenses of marriage of a co-parcener were incurred subsequent to the institution of a suit for partition but prior to the decree of the Court of first instance: *Held,* that the severance of the joint family was effected only by the decree, and that the expenses should be credited to him in the account to be taken in the suit. Where a member of a joint Hindu family made a gift of some immoveable property, which was not unreasonable regard being had to the extent of his share in all the joint family properties, and his undivided son did not impeach the gift during his father's lifetime: *Held,* that neither the son nor the grandson could question the validity of the same after the donor's death. NARAYANA *v.* RAMALINGA (1915) . **I. L. R. 39 Mad. 587**

5. ——————— *Partition—Shares of adopted son in joint Hindu family and natural born son of another father—Construction of Dattaka Chandrika, s. 5, paragraphs 24 and 25—Position of adopted son in joint Hindu family.* A Hindu joint family in Bombay governed by the Mitakshara law as altered or interpreted by the Vyavahara Mayukha, consisted of two sons H and B. H died in September 1900 leaving a widow who was then pregnant. B died on 17th December of the same year leaving a widow to whom he gave authority to adopt. On 18th December the widow of H gave birth to a son, the respondent; and in February 1901 the widow of B adopted the appellant as a son to her husband. In a suit for partition by the appellant against the respondent. *Held* (reversing the decision of the Appellate High Court, and restoring that of the Trial Judge of the same Court), that, on the construction of paragraphs 24 and 25 of s. 5 of the Dattaka Chandrika, the adopted son was entitled to a share equal to the share of the natural born son. The doctrine according to which an adopted son on partition takes only a reduced share in the family property applies only to cases in which the competition is between an adopted son and a subsequently born natural son of the same father. *Raghubanund Doss* v. *Sadhu Churn Doss, I. L. R. 4 Calc. 425,* dissented from. *Tara Mohun Bhuttacharjee* v. *Kripa Moyee Debia, 9 W. R. 423,* and *Dinonath Mukerji* v. *Gopal Churn Mukerji 8 C. L. R. 57,* followed. As so construed, paragraphs 24 and 25 of s. 5 of the Dattaka Chandrika are not in conflict with any principle of the Mitakshara or of the Vyavahara Mayukha, and they are consistent with the reference to the text of Vasistha in paragraph 1, s. 10 of the Dattaka Mimansa. An adopted son occupies the same position in the family of the adopter as a natural born son, except in a few instances which are accurately defined in the Dattaka Chandrika and the Dattaka Mimansa and relate to marriage and to competition between an adopted son and a subsequently born legitimate son to the same father. *Sumboo Chunder Chowdry* v. *Naraini Dibeh, 3 Knapp 55, Pudma Coomari Debi* v. *Court of Wards, L. R. 8 I. A. 229,* and *Kali Komul Mozumdar* v. *Uma Sunker Moitra, L. R. 10 I. A. 138,* followed. The position of an adopted son in the family cannot now be decided by reference to the place which was assigned by Manu to the twelve then possible sons of a Hindu, who, whatever their rights may have been then, are long since obsolete. NAGINDAS BHAGWANDAS *v.* BACHOO HURKISSONDAS (1915)

I. L. R. 40 Bom. 270

HINDU LAW—RELIGIOUS ENDOWMENT.

See HINDU LAW—ENDOWMENT.

1. ——————— *Mourashi Muth, succession to—Onus of proof—Indian Succession Act (X of 1865), s. 187—Will not probated, if can be used in evidence and for what purpose—Indian Evidence Act (I of 1872), s. 32, (5)—Relationship between Mohunt and Chela, if relationship by adoption—Existence of relationship, statement relating to.* One R was the Mohunt of a *muth* known as the Khumbakul Muth. He was succeeded by his *chela* S. After the death of S the plaintiff claimed to be his lawful successor as his *gurubhai.* The defendant resisted the claim on the allegation that he had been adopted by S as a *chela.* The *muth* in question was admittedly a *maurasi muth,* and the Court found that in *maurasi muth* the *chela* succeeds and in default of a *chela* the *gurubhai* succeeds and when there are more *chelas* than one the eldest generally succeeds but a junior *chela* may succeed if he be found more capable and if he be selected by the last Mohunt as his successor. *Held,* that it was for the plaintiff to prove that he was the *chela* of R and that the defendant was not the *chela* of S, as he must succeed on the strength of his own title and not on the infirmity, if any, in the title of the defendant. In the course of the evidence in the case two wills alleged to have been executed by R and S respectively neither of which was proved in the Probate Court were produced, the former of which only was found to be genuine. *Held,* that notwithstanding s. 187 of the Indian Succession Act which is incorporated in the Hindu Wills Act, a will not proved in the Probate Court may be used in evidence for a purpose other than the establishment of a right as executor or legatee and in the present case the recital in the will of R, which was found to be genuine, that he had no one else as his *chela* except S was admissible in evidence under s. 32, cl. (5), of the Evidence Act inasmuch as the relationship between a Mohunt and his *chela* is a relationship by adoption and a statement that A has one *chela* B and has no other *chela* is a statement relating to the existence of a relationship. ACHYUTANANDA DAS *v.* JAGANNATH DAS (1914) . . . **20 C. W. N. 122**

HINDU LAW—RELIGIOUS ENDOWMENT— *contd.*

2. ——————— *Proof that property has been endowed as debutter—Permanent image if essential to valid dedication.* A permanent image is not absolutely essential for dedication to a Thakur. Where the intention of the donor appeared to have been to dedicate the property absolutely to *deva sheva*, the fact that the income of the property exceeded the expenses of the *sheba* and the *shebaits* frequently dealt with the property or the income as personal property would not make the property secular subject to a charge for the *deva sheva*. ASITA MOHON GHOSE MOULIK *v.* NIRODE MOHON GHOSE MOULIK (1916) . . . . **20 C. W. N. 901**

3. ——————— *Shebaitship, devolution of, to heirs in the absence of directions by founder, on the death of last shebait duly appointed by him—Will giving estate to idol and appointing successive executors—De facto appointment of shebait—Vested interest, principle of—Shebait's office and rights, nature of.* A Hindu testator had two sons by his first wife and four sons by his second wife. In his will he provided that all his properties would devolve on his family Deity and his second wife and two of her sons J and B would successively be executrix and executors and that his two sons by his first wife would not be appointed executors. After the death of the second wife and her sons J and B, her other two sons died, one leaving a widow defendant No. 1. Of the two sons of the testator by his first wife one (defendant No. 2) was living and the other had died leaving a son the plaintiff who brought the present action for a declaration that he had a four annas share in the *shebaitship* of the Deity. *Held*, that the effect of the will was to constitute the second wife and her sons J and B successive *shebaits* of the endowments though they were described as executors in respect of the endowed property. That the testator did not prescribe how the *shebaitship* would devolve after the death of his son B. In the circumstances the devolution of the office of *shebait* follows the line of inheritance from the founder, in other words, it passes to his heirs unless there has been some usage or course of dealing which points to a different mode of devolution. That on the death of B the last *shebait* named by the founder the office vested in the four sons of the founder then alive, namely, the two uterine brothers of B and the two sons of the founder by his first wife; and this notwithstanding the fact that the founder intended to exclude his sons by his first wife, for the heir-at-law though in terms excluded from benefit under the will cannot be excluded from his general right of inheritance without a valid devise to some other person. *Tagore* v. *Tagore*, *L. R. I. A. (Sup. Vol.) 47, 66.* That the plaintiff had a four annas share in the *shebaitship*. That the principle of vested interest while the actual enjoyment of the expected interest is postponed till the termination of the life-estate has no application to cases of the present description. That a *shebait* holds his office for life but this does not signify that he has a life-interest in the office with the remainder presently vested in the next taker. The entire office is vested in him, though his powers of alienation are qualified and restricted. The position of a *shebait* is analogous to that of a Hindu female in possession of the estate of the last full owner rather than to that of the holder of a life-estate and when a founder has given valid directions as to the devolution of the *shebaitship* as in the present case upon the death of the last *shebait* the office vests in persons who at the time constituted the heirs of the founder provided the last *shebait* has not taken it absolutely; when the office has so vested in them upon the death of each member of the group it passes by succession to his heir subject to the important qualification that the rule—that when a worship of *thakoor* has been founded the *shebaitship* is vested in the heirs of the founder in default of evidence that he has disposed of it otherwise or of there being some evidence of usage, course of dealing or some circumstances to show a different mode of devolution—cannot be applied so as to vest the *shebaitship* in persons who according to the usages of the worship cannot perform the rights of the office. KUNJAMANI DASSI *v.* NIKUNJA BIHARI DAS (1915) . **20 C. W. N. 314**

HINDU LAW—REVERSIONER.

——————— *Right of presumptive reversionary heir to declaration of his right—Suit against widow in possession of her husband's estate for waste and wrong dealing with property—Failure to prove charges—Right of reversioner to sue for protection of the husband's estate.* A plaintiff who brought a suit as presumptive reversionary heir against a widow in possession of her husband's estate, in order to protect the property, and made charges against the widow of waste, misappropriation and other wrong dealing with the property, none of which charges were established, was held not entitled to a declaration of his right as reversionary heir, even though his title had been disputed, in the suit. It is not legitimate to give such a plaintiff, under cover of a prayer for "further relief," and after the substantial heads of his claim have failed, any greater right to obtain such a declaration than he would have had if it had been asked for directly, and unaccompanied by other and unfounded claims *Jaipal Kunwar* v. *Indar Bahadur Singh, I. L. R. 26 All. 238; L. R. 31 I. A. 67*, and *Venkatanarayana Pillai* v. *Subbammal, I. L. R. 38 Mad. 406; L. R. 42 I. A. 129*, distinguished. JANAKI AMMAL *v.* NARAYANASAMI AIYER (1916) **I. L. R. 39 Mad. 634**

HINDU LAW—STRIDHAN.

1. ——————— *Inheritance—Female heirs.* Stridhan inherited by female heirs does not become the latter's *stridhan*. The female heirs take only a Hindu woman's estate

HINDU LAW—STRIDHAN—*contd.*

in the property. *Sheo Shankar Lal* v. *Debi Sahai, I. L. R. 25 All. 468; L. R. 30 I. A. 202, Prankissen Laha* v. *Noyanmoney Dassee, I. L. R. 5 Calc. 222,* and *Huri Doyal Singh Sarmana* v. *Grish Chunder Mukerjee, I. L. R. 17 Calc. 911,* referred to. JOGENDRA CHANDRA BANERJEE *v.* PHANI BHUSAN MOOKERJEE (1915)

I. L. R. 43 Calc. 64

2. ——— *Succession—Dayabhaga—Daughter's daughter, if may succeed—Daughter succeeding to mother's stridhan, whether takes it as stridhan.* The general principle in Bengal is that women can only inherit under some express text, and a daughter's daughter is not included in the text-books in the special line of heirs to *stridhan,* whether the *stridhan* is of the class known as *yautaka* or *ayautaka.* A woman inheriting *stridhan* property takes only the limited estate of a Hindu woman in such property and on her death it passes to the heir of the woman whose *stridhan* it was. MADHUMALA DASSI *v.* LAKSHAN CHANDRA PAL (1913).

20 C. W. N. 627

3. ——— *Saudayika—Gift of property by a father to his daughter before her marriage—Power of alienation.* A gift of property by a father to his daughter before her marriage is *saudayika stridhanam* which is at her absolute disposal. *Per* SESH AGIRI AYYAR J.—*Saudayika stridhanam* is gifts from affectionate kindred and includes both *yautaka* and *ayautaka* not received from strangers. Hindu Law texts examined. *Ponnusowmy Moodelly* v. *Subbaroya Moodely (1859) 6 Selwin's S. D. A. Rep. 7,* referred to. *Judoo Nath Sircar* v. *Busunt Coomar Roy Chowdhry, 19 W. R. 264,* applied. *Bhau* v. *Raghunath I. L. R. 30 Bom. 229,* referred to. *Dantuluri Rayapparaz* v. *Mallapudi Rayudu, 2 Mad. H. C. R. 360,* distinguished. *Quære:* Whether immoveable property received from the husband should be excluded from this species of disposable property. MUTHUKARUPPA PILLAI *v.* SELLATHAMMAL (1914) . . **I. L. R. 39 Mad. 298**

4. ——— *Mitakshara Succession—Adoption—Rights of adopted son—Competition between adopted son and natural son of co-wives—Sapindas—Co-wife's natural son, if "son"—Texts, construction of—Mitakshara, Ch. II s. XI, paras. 9, 11, 25—"Without issue" meaning of—Manu, Ch. IX, verse 183—Yajnavalkya Ch. II, verses 117, 145.* S, a Hindu governed by the Mitakshara school of Hindu Law, married four wives in succession. In conjunction with his first wife, by whom he had no issue, he adopted a son H. By his second wife, S had a son G born to him. S predeceased his fourth wife M, having had no issue by her. *M* died intestate. On a suit brought by H:—*Held,* that both H and G were entitled to succeed to M's *stridhan* property as *sapindas* of S, and in the absence of any express text curtailing the rights of the adopted son in the circumstances of the present case, H was entitled to share equally with G on the general principle that the adopted son occupies

HINDU LAW—STRIDHAN—*concld.*

the same position as a natural son and his rights are in every respect similar to those of a natural son. *Joykishore Chowdhury* v. *Panchoo Baboo, 4 C. L. R. 302, Padmakumari Devi* v. *Court of Wards, I. L. R. 8 Calc. 500, L. R. 8 I. A. 229,* followed. *Nagindas Bhagwandas* v. *Bachoo Hurkissendas, I. L. R. 40 Bom. 270,* referred to. The expression "without issue" in Mitakshara, Chap. II, s. XI, para. 9, must be construed in its ordinary sense, and M must be deemed to have died "without issue." *Quære:* Whether Manu, Chap. IX, verse 183 has any reference to questions of inheritance. *Annapurni Nachiar* v. *Forbes, I. L. R. 23 Mad. 1, Bhimacharya* v. *Ramacharya, I. L. R. 33 Bom. 452,* referred to. *Per* MOOKERJEE J. A special text forming an exception to a general text should be construed strictly and applied only to cases falling clearly within it. *Gangu* v. *Chandrabhagabai, I. L. R. 32 Bom. 275,* and *Anandi* v. *Hari Suba, I. L. R. 33 Bom. 404,* referred to. GANGADHAR BOGLA *v.* HIRA LAL BOGLA (1916) . . **I. L. R. 43 Calc. 944**

HINDU LAW—SUCCESSION.

1. ——— *Dayabhaga School—Whether great-grandfather's son's daughter's son or maternal uncle preferential heir—Stare decisis.* In a Dayabhaga family the great-grandfather's son's daughter's son is entitled to succeed as heir in preference to the maternal uncle. *Kailash Chandra Adhikari* v. *Karuna Nath Chowdhry, 18 C. W. N. 477,* followed. The principle of spiritual benefit regarding the succession in a Dayabhaga family laid down by the Full Bench in *Gooroo Gobind Shaha's Case, 13 W. R. (F. B.) 49; 5 B. L. R. 15,* cannot be questioned now. KEDAR NATH BANERJEE *v.* HARI DAS GHOSE (1915) . . . . **I. L. R. 43 Calc. 1**

2. ——— ——— *Illegitimate son of a Sudra by a dancing woman kept in continuous and exclusive concubinage—Right to succeed to joint family property.* The illegitimate son of a Sudra by a dancing woman who was by profession a prostitute before she came into his keeping but who was kept by him in continuous and exclusive concubinage thereafter, is entitled to get his appropriate share in the joint family property after his father's death provided the connection between his father and mother was not incestuous or adulterous. This right is not subject to a further condition that a marriage could have taken place between the father and the mother according to the custom of the caste to which the mother belonged. SOUNDARARAJAN *v.* ARUNACHALAM CHETTY (1915)

I. L. R. 39 Mad. 136

3. ——— *Lunacy—Effect on the devolution of immovable property of lunacy of next heir—Suit to recover possession from daughters of lunatic—Limitation—Limitation Act (IX of 1908), Sch. I, Art. 141.* A person is disqualified under the Hindu law from succeeding to property if he is insane when the succession opens, whether his insanity is curable or incurable.

HINDU LAW—SUCCESSION—*concld.*

Deo Kishen v. *Budh Prakash, I. L. R. 5 All. 509,* and *Tirbeni Sahai* v. *Muhammad Umar, I. L. R. 28 All. 247,* referred to. The daughter, therefore, of such person would derive no legal title through her father. The legitimate wife of a lunatic Hindu took possession during his lifetime of certain immovable property which had belonged to his father and subsequently transferred part of it to her daughters and to the husband of one of them. She retained a portion herself, which after her death came into the possession of one of the daughters. *Held,* that a suit to recover the property of which possession had been so obtained and held was governed by Art. 141 of the first Schedule to the Indian Limitation Act, 1908. *Legge* v. *Ram Baran Singh, I. L. R. 20 All. 35,* distinguished. RAM SINGH *v.* MUSAMMAT BHANI (1915) **I. L. R. 38 All. 117**

4. ——— *Mitakshara—Succession—Bandhu—Mother's brother's son preferred to mother's sister's son.* According to Hindu law of the Mitakshara school, the mother's brother's son takes precedence as an heir over the mother's sister's son. *Appandai Vathiyar* v. *Bagubali Mudaliyar, I. L. R. 33 Mad. 439,* dissented from. *Buddha Singh* v. *Laltu Singh, I. L. R. 37 All. 604,* referred to. RAM CHARAN LAL *v.* RAHIM BAKSH (1916) . . **I. L. R. 38 All. 416**

HINDU LAW—WIDOW.

1. ——— *Decree against widow for husband's debt—Attachment of property—Previous alienation by widow for no justifiable cause—Attachment and sale thereupon, effective to convey reversionary interest.* A plaintiff who had obtained a decree against a Hindu widow in respect of a debt due by her late husband attached a certain property as belonging to her husband which she had sold to a stranger several years before the attachment, for no purpose binding on the reversioner. *Held,* that the decree holder was entitled to attach and bring to sale the reversionary interest in the property, subject to the enjoyment thereof by the alienee during the widow's lifetime. CHIDAMBARAMMA *v.* HUSSAINNAMMA (1915) . . **I. L. R. 39 Mad. 565**

2. ——— *Alienation by widow of her husband's estate—Surrender by widow to nearest reversioner, subsequent to alienation—Effect of surrender on alienations.* A surrender by a Hindu widow of her interest in her husband's estate in favour of the nearest male reversioner cannot affect alienations, which were made by her prior to the surrender and which though not binding on the reversioners were binding on her for her life. *Sreeramulu* v. *Kristamma, I. L. R. 26 Mad. 143,* followed. *Singaram Chetty* v. *Kalianasundaram Pillai* (1914), *Mad. W. N. 735,* referred to. *Ramakrishna* v. *Tripura Bai I. L. R. 33 Bom. 88,* dissented from. SUBAMMA *v.* SUBBRAMANYAM (1915) . **I. L. R. 39 Mad. 1035**

3. ——— *Hindu widow—Effect of compromise entered into by a Hindu widow with a limited estate—Rights of reversioners.* A Hindu widow in possession as such of her husband's estate brought a suit for possession of two shops on the allegation that they formed part of her husband's estate. The suit was compromised, the effect of which was that the widow recognized the defendants as full proprietors and they, on the other hand, had to pay a certain sum of money. To raise this money they mortgaged the two shops. The mortgagee brought a suit for sale and the shops were purchased by one H, at the auction sale. After the death of the widow the reversioners of her deceased husband brought a suit to recover possession of the aforesaid shops. *Held,* that a compromise entered into by a Hindu widow, with a limited estate, resulting in the alienation of property forming part of her husband's estate cannot bind the reversioners, unless it is shown that it was for such purposes as would justify a sale by a Hindu widow. —*Imrit Konwar* v. *Roop Narain Singh, 6 C. L. R. 76, Musammat Raj Kunwar* alias *Sheo Murat Koer* v. *Musammat Inderjit Kunwar, 5 B. L. R. 585, Rajlakshmi Dasee* v. *Katyayani Dasee, I. L. R. 38 Calc. 639, Khunni Lal* v. *Gobind Krishna Narain, I. L. R. 33 All. 356, Mahadei* v. *Baldeo, I. L. R. 30 All. 75,* and *Behari Lal* v. *Daud Husain, I. L. R. 35 All. 240,* referred to. KANHAIYA LAL *v.* KISHORI LAL (1916) **I. L. R. 38 All. 679**

4. ——— *Maintenance secured by deed—Subsequent unchastity—Living chaste at the time of suit, effect of.* Where in a suit by a Hindu widow against her deceased husband's brother for maintenance at the rate fixed by agreement, it was found that the plaintiff had since lived an immoral life but reformed her ways at the time of the suit: *Held,* that she lost her right to the rate fixed in the deed but was entitled to a starving allowance. Texts and case law reviewed. SATHYABHAMA *v.* KESAVACHARYA (1915) . **I. L. R. 39 Mad. 658**

HINDU LAW—WILL.

1. ——— *Construction of will—Contingent bequest in futuro of whole estate—Succession Act (X of 1865), ss. 107, 111—Event on occurrence of which distribution was to take place, specified in will.* The will of a Hindu resident in Calcutta and subject to the Dayabhaga School of law, who died on 10th November 1907, stated, "I appoint my wife Poritoshini Dasi to be the sole executrix of this my will. I hereby authorise my said wife to adopt *dattaka putra.* In case of death of an adopted son my said wife shall adopt one after another five sons in succession. If my said wife dies without adopting a son, or if such adopted son predeceases her without leaving any male issue, in such case my estate after the death of my said wife shall pass to the sons of my sister Benodini Dasi who may be living at the time of my death." Two sons of his sister were living at the death of the testator. On his death his widow as executrix duly obtained probate of the will, and in August 1909, in pur-

HINDU LAW—WILL—*contd.*

suance of the authority given her by her deceased husband, she adopted a son who, however, died on 10th March 1910, an infant unmarried and leaving no male issue; and a few days afterwards the widow herself died. In a suit by the adoptive mother of the testator, now represented by the appellants, against the two sons (the present respondents) of his sister, for a declaration that in the events that had happened the devise to them had failed, and that the testator's estate had devolved on her. *Held*, on the construction of the will (affirming the decisions of the Courts in India), that on the death of the testator the widow took an interest in the estate which by virtue of the probate was not devested on her adoption of a son to her husband, and on her death the executory bequest to the sons of the testator's sister took effect and the estate passed to them. Section III of the Succession Act (X of 1865) was not applicable because the event on the occurrence of which the distribution was to take place was distinctly mentioned as, in the words of the will, "the death of my wife," and the gift to the testator's nephews was therefore not affected by that section. BHUPENDRA KRISHNA GHOSE *v.* AMARENDRA NATH DEY (1915)

I. L. R. 43 Calc. 432

2. ——— *Revocation of will —Will disposing of property and nominating boy for adoption to be completed later and giving wife power to complete it if he does not do so—Subsequent completion of adoption by testator—Subsequent will making different disposition of property, but not revoking former will—Later will held in former suit illegal as disposing of ancestral property, which testator had no power to do—Dependent relative revocation.* A Hindu testator being the sole co-parcener of certain property made a will in 1889 by which he appointed his wife S, and his daughter R executrices, and in which he nominated as his son, one V, a son of his daughter, but stated that he had not completed the adoption, and he directed that if he should die before completing it, S should after his death perform the necessary ceremonies, and take the grandson in adoption, and the will contained the following clause:—"In case any danger may happen to my grandson V during the lifetime of my wife S who is one of my executrices, my wife may according to her wishes take in adoption one of my aforesaid daughter's sons, and give my properties to that son." The testator completed the adoption of V on 9th February 1890. On 21st March 1890 he executed another will of which a third person was made executor together with S and R and which contained a gift that in case of the death of V his issues should enjoy the property. There were in it no words revoking the previous will, and it did not refer to the clause in the former will which gave S a contingent power of adoption. On 4th April 1890 the testator died. The will of 1889 was not admitted to probate, but a grant of probate was made of the will of 1890. V died on 4th June 1891. In 1894 the appellant as reversionary heir of V obtained

HINDU LAW—WILL—*contd.*

a decree declaring the will of 1890 void and inoperative according to Hindu law as disposing of ancestral property over which the testator had no power of disposal. On 13th August 1906 S adopted the respondent P in accordance with the authority given her by the will of 1889. In a suit by the appellant against S and P for a declaration that P's adoption was illegal and invalid. *Held*, that the document executed by the testator in 1889 was a will, and not a mere non-testamentary authority to adopt. It contained the appointment of executors, and was executed by a testator who at his date had power to dispose of the property of which he purported to dispose. *Held*, also, that after the completion of V's adoption and the consequent admission into the joint family of another co-parcener, the testator had no power to dispose of the property which on his death was ancestral property, and to that extent the will of 1889 became ineffectual. But there was no such inconsistency between the two wills as that the provisions of the earlier will could not stand with the existence of the later will. The will of 1890 no doubt prevailed over the will of 1889, but the contingent power to adopt was unaffected by anything in the later will. *Held*, further, that the question whether the disposition of the property in the later will revoked the provisions as to its disposal in the earlier will, turned upon the application of the doctrine of dependant relative revocation which was really a question of intention, and that under the circumstances an alternative inconsistent disposition which was not valid or effectual in itself did not revoke an earlier disposition of the same property. *Alexander* v. *Kirkpatrik*, *L. R. 2 H. L. Sc. & Div. 397*, followed in principle. VENKATANARAYANA PILLAY *v.* SUBBAMMAL (1915)

I. L. R. 39 Mad. 107

3. ——— *Construction of will—Will of Hindu widow in possession of her husband's estate—Bequest of whole estate to one person on conditions—Conditions containing exception to conveyance of entire estate—Bequest of portion of estate to different legatee—Owner in possession—Malik-o-qabiz—Absolute or limited estate.* A Hindu widow in possession of her husband's estate disposed of it by will as follows:—"Under the will of my husband I am the sole 'owner in possession' of his entire estate and possess all the proprietary powers . . . I bequeath the entire estate of my husband to Fateh Chand . . . . subject to the following conditions . . . (i) So long as I live I shall continue to be the 'owner in possession' of the entire estate . . . and possess all the powers and such as making sales, mortgages, gift, etc. (ii) After my death the said person (the legatee) shall become 'owner in possession' of the entire estate of my husband, and he, too, shall possess all the powers of alienation like myself. (iv) I have bequeathed mauza Khudda with all the property to Musammat Gomi . . . After my death she shall be the 'owner in possession' of the entire property in

HINDU LAW—WILL—*contd.*

mauza Khudda aforesaid." *Held* (affirming the decision of the High Court), that on the construction of the will the words "owner in possession" (*Maliq-o-qabiz*) in cl. 4, conferred on Musammat Gomi an absolute estate, and that completness of the ownership and possession was not altered by any other expressions in the will. *Surajmani* v. *Rabi Nath Ojha*, *I. L. R. 30 All. 84*; *L. R. 35 I. A. 17*. Taking all the clauses of the will together there was no repugnancy in such a construction, for, though the entire estate was conveyed in the first place to Fateh Chand, it was subject to conditions, one of which (cl. 4) bequeathed mauza Khudda as an exception to the conveyance of the entire estate. FATEH CHAND *v.* RUP CHAND (1916) **I. L. R. 38 All. 446**

4. ——— *Will—Co-executors—Probate obtained by one executor—Subsequent application by the other co-executor for joint probate—Compromise between co-executors—Mortgage of estate by one executor to the other—Renunciation of executorship—Validity of compromise—Action of executor without probate, validity of—Probate and Administration Act (V of 1881), ss. 2, 4, 82, 92—Applicability of, to all Hindus—Executor, trustee of charities under the will—Claims of trustee against trust estate—Charge—Limitation Act, Art. 130—Suit for account and for scheme, against trustee—Right of trustee as defendant to equities in such suit—Decree in favour of trustee as defendant—Civil Procedure Code (Act V of 1908), s. 92.* It is doubtful if an executor is competent in law to compromise the claims of his co-executor against the testator's estate; but assuming that he has such a power it is essential that the compromise should be entered into *bonâ fide* and for the benefit of the estate. *Per* WALLIS, C. J.—The Probate and Administration Act does not say that s. 82 is to apply only to cases of Hindus governed by the Hindu Wills Act, but s. 2 provides that chapters II to XIII, which include s. 82 are to apply to every Hindu. *Per* SESHAGIRI AYYAR J.—It is not incumbent on an executor of the will of a Hindu to obtain probate before acting as an executor. S. 82 of the Probate and Administration Act is no bar to an executor acting as a representative of a Hindu testator's estate, because a co-executor had alone obtained probate of the will in his name. S. 92 of the said Act should be confined to cases where probate is compulsory before dealing with the property. An executor, who was appointed trustee of a charity under a will and who had claims against the estate in respect of his administration, has no charge on the estate in respect of such claims but should bring his suit within six years under art. 120 of the Limitation Act. But when a suit was brought against him for an account, if he was under a liability to account to the trust at the date of the suit, he would be entitled to all the equities flowing from the taking of the account and a decree could be passed in such suit in her favour for the amount that might be found due to him from the estate, though a suit by the trustee for the same might be barred by limitation. CHIDAMBARA MUDALIAR *v.* KRISHNASAMI PILLAI (1914) . . . **I. L. R. 39 Mad. 365**

HINDU LAW—WILL—*contd.*

5. ——— *Construction—Absolute gift—Rules of construction approved by Courts—Effect of subsequent clauses in will restricting absolute gift created in previous clauses—will of a Hindu, matters which Court may consider in construing—Malik—Nirbyudha malik, meaning of.* A Hindu testator left a will the material portions of which were as follows. The second and third clauses of the will appointed the testator's widow as executrix and authorised her to meet the expenses and pay the debts by sale, if necessary, of a portion of the estate. The fourth clause provided that the widow shall obtain as *nirbyudha malik* whatever moveable and immoveable properties shall be left by the testator and she shall be the absolute owner with the rights of gift, sale and all other kinds of transfer. In the next three clauses the testator authorised the widow to adopt a son and prescribed the devolution of the estate in the event of such adoption and in the last clause he provided that if at the time of the death of his widow there be no adopted son or if no son or wife of the adopted son be alive, then the testator's heir according to the Hindu *shastras* who shall be alive at the time shall get the properties which shall remain after disposal by the widow by way of gift or sale of the same: *Held*, that under the fourth clause of the will the widow took an absolute interest in the estate devised and the gift over contained in the last clauses of what might remain undisposed of by her was void and inoperative in law. That the provisions of the will relating to adoption and the devolution of the estate in the event of adoption could not qualify the effect of the fourth clause even though they contained provisions repugnant thereto. That where an absolute interest is given the Court will not cut it down by subsequent words in the will unless they clearly have an effect to restrict it. That where a devisee takes an absolute interest a gift over on his failure to dispose of the property or whatever part of the property he does not dispose of is void. That the rule of construction applicable to cases of this description is that not only ought the Court to look to the words of a will alone to determine the operation and effect of the devise but the Court ought to disregard altogether the legal consequences which may follow from the nature and qualities of the estate when such estate is once collected from the words of the will itself: *Scarborough* v. *Savile*, *3 A. & E. 897*, *962*. The instrument must receive a construction according to the plain meaning of the words and sentences therein contained, that is, the words are to be first read in their grammatical and ordinary sense unless the context shows otherwise. That in construing the will of a Hindu it is not improper to take into consideration what are known to be the ordinary notions and wishes of Hindus with respect to the devolution of property, namely, that a Hindu generally

HINDU LAW—WILL—*concld.*

desires that an estate, specially an ancestral estate, shall be retained in his family and also that a Hindu knows that as a general rule, at all events, women do not take absolute estates of inheritance which they are enabled to alienate but where the terms are perfectly clear the Court cannot assume contrary to the plain meaning thereof that the testator intended to create estates of a particular description and then bend and twist the language in favour of the assumption so made. That the use of the term *malik* may not by itself necessarily create an absolute interest but the expression *nirbyudha malik* is the strongest and most unequivocal phrase employed in the vernacular to indicate absolute ownership. SURES CHANDRA PALIT *v.* LALIT MOHAN DUTTA CHOUDHURI (1915) . . . **20 C. W. N. 463**

HINDU LAW—WOMAN'S ESTATE.

1. ——————— *Legal necessity—Marriage of daughter's daughter when son-in-law gharjamai, if legal necessity—Construction—Mortgage of widow's "right and interest" if covers more than life-interest.* Where A, a zemindar's widow, married her only daughter S to a cultivator in order that the son-in-law may come and live in the mother-in-law's house, and the issue of the marriage was a daughter: *Held*, that though A might be under a moral duty to see that the girl was properly married, the expenses of the marriage could not be charged on her husband's estate as a legal necessity. The fact that a Hindu widow says she is mortgaging "her right and interest" in her husband's estate does not necessarily indicate that she was mortgaging only a life-interest. NARAINBATI *v.* RAMDHARI SINGH (1916) . . . . **20 C. W. N. 734**

2. ——————— *Alienation by limited owner—Propriety, test of—"Legal necessity" if only test—Consent of reversioner—Attestation of deed followed by subsequent ratification—Retrospective operation—Compromise and family arrangement—Compromise by limited owner—Bonâ fides of claim—Admission in compromise of futility of claim, if negatives bonâ fides—Conveyancing device not intended to express true state of executant's mind, effect if to be given to—Compromise which affirms previous executed registered lease, if requires registration.* The test to be applied in determining the validity of an alienation by a limited owner is whether the purpose for which the alienation was made was in the circumstances of the case proper and legitimate, and the existence of "legal necessity" in the narrow sense of actual pressure on the estate or the danger to be averted is not the only test. *Held*, that in this case a permanent *mokurari* lease granted by the daughter of a deceased Hindu of some properties belonging to his estate in settlement of a *bonâ fide* dispute was binding on the reversioner. *Khunni Lal* v. *Gobind Krishna Narain, L. R. 38 I. A. 87:* s. c. *I. L. R. 33 All. 356; 15 C. W. N. 545*, applied. Where it appeared that the permanent lease was not only attested by

HINDU LAW—WOMAN'S ESTATE—*contd.*

the reversioner but that he later on set up the lease in answer to a suit of the grantee claiming the entire estate by survivorship as the undivided coparcener of the last male owner and ultimately joined in a compromise by which the plaintiff in the suit admitted that he had no title to the estate and the reversioner affirmed the *mokurari potta: Held*, that if there was doubt as to the efficacy of consent as evidenced by the attestation, there was no question as to his subsequent ratification of the lease which operated retrospectively. That the compromise was not inadmissible in evidence for want of registration as it did not purport to convey, release or otherwise deal with immoveable property. *Per* MOOKERJEE J.—It only recorded the approval of the transaction by the reversionary heir and (per *Curiam*) afforded cogent evidence of its propriety. *Collector of Masulipatam* v. *Cavaly Venkata Narrainapah, 8 Moo. I. A. 523, 551, Shamsundar* v. *Achhan Koer, L. R. 25 I. A. 183:* s. c. *I. L. R. 25 All. 71; 2 C. W. N. 729*, and *Bejoy Gopal Mukerjee* v. *Girindranath, I. L. R. 41 Calc. 793, 805;* s. c. *18 C. W. N. 673*, referred to. That the recitals in the *mokurari potta* depreciatory of the grantee's claim should not be regarded as a correct description of his mind, being only a conveyancing device expressive of his abandonment of the claim for a consideration. *Hanooman Prosad* v. *Babooee Moneraj Kooeri, 6 Moo. I. A. 393*, and *Lal Achal Ram* v. *Raja Kazim Hossain, L. R. 32 I. A. 113:* s. c. *I. L. R. 27 All. 271; 9 C. W. N. 477*, referred to. Authorities dealing with the validity of compromises in settlement of disputed claims and of family arrangements with reference to the question of consideration examined by Mookerjee, J. *Per* MOOKERJEE J.—A qualified owner like a Hindu widow, daughter, or mother is not bound at her peril to pursue a litigation in respect of the estate in her hands unremittingly to the ultimate Court of Appeal. UPENDRA NATH BOSE *v.* BINDESRI PROSAD (1915) **20 C. W. N. 210**

3. ——————— *Widow, alienation by, when binds reversioner—Relinquishment for a consideration—Relinquishment of whole estate necessary—Widow retaining moveables and getting back some land to hold as life estate—Mithila law—Family arrangement.* It may be taken as established without doubt that a Hindu widow may relinquish her estate and this will have the effect of accelerating the estate of the next reversioner. Further, an alienation by a Hindu widow will be valid where there was consent of the next heirs and the alienation is capable of being supported by reference to the theory of relinquishment and consequent acceleration of the interest of the consenting heirs. But the alienation in such a case must be of the whole of the estate. *Debi Prosad Chowdhury* v. *Gopal Bhagat, I. L. R. 40 Calc. 721:* s. c. *17 C. W. N. 721*, referred to. The widow is not precluded from obtaining a benefit for relinquishing her estate. *Nobokishore* v. *Hari Nath, I. L. R. 10 Calc. 1102, 1108*, followed.

HINDU LAW—WOMAN'S ESTATE—*concl'd.*

Bajrangi v. *Manokarnika, L. R. 35 I. A. 1:* s. c. *I. L. R. 30 All. 1; 12 C. W. N. 74,* referred to. Where under a compromise made between the mother, the sisters and M the immediate male reversionary heir of a deceased Hindu infant governed by the Mithila school the whole of the immoveable property of the deceased was relinquished by the mother M, and the mother herself was given the whole of the moveable property inclusive of certain mortgage bonds, and M gave half of the immoveable properties to the deceased's sisters and the latter and M respectively gave 50 bighas of land to the deceased's mother with remainder to the respective donors and their heirs. *Held,* that, under Mithila law, the moveable properties (including the mortgage bonds) had passed by inheritance to the deceased's mother on his father's death. That the life estate in 100 bighas which the deceased's mother got back was essentially different from the widow's estate which she formerly enjoyed and could in no way be regarded as a reservation or restoration of the widow's estate. That under the terms of the compromise the lady had effectively relinquished and destroyed her estate as a Hindu widow and accelerated that of M. *Semble:* The compromise might be supported as a family arrangement between all the parties competent to deal with the whole of the property (the daughters having claimed under a will of their father which had been probated). SURESSUR MISSER *v.* MOHESH RANI MESRAIN (1915) . **20 C. W. N. 142**

HINDU WIDOW.

See HINDU LAW—WIDOW.

See LIMITATION ACT (IX OF 1908), ART. 91 . . **I. L. R. 40 Bom. 51**

See LIMITATION ACT (IX OF 1908), ARTS. 132, 75 . . **I. L. R. 39 Mad. 981**

——— **in possession of husband's estate, will by—**

See HINDU LAW—WILL. **I. L. R. 38 All. 446**

HINDU WOMAN.

——— **settlement by—**

See SETTLEMENT BY A HINDU WOMAN ON TRUSTS . **I. L. R. 40 Bom. 341**

HISTORICAL WORKS.

——— *Reference to Historical Works in appeal—Propriety.* References to works of history (not given in evidence or referred to in the Court of first instance) at the appellate stage are irregular and to be avoided. *Vallabha* v. *Madusidanan, I. L. R. 12 Mad. 495.* TUNI ORAIN *v.* LEDA ORAON (1916) **20 C. W. N. 1082**

HOLDER.

——— **not a holder in due course—**

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), SS. 30, 47, 59, 74, 94. **I. L. R. 39 Mad. 965**

HOME GUARANTEE.

See CONTRACT . **I. L. R. 43 Calc. 77**

HOSTILE FIRM.

——— **contract with—**

See CONTRACT ACT (IX OF 1872), SS. 56 (2), 65 . **I. L. R. 40 Bom. 570**

HOSTILE FOREIGNER'S TRADING ORDER.

See CONTRACT ACT (IX OF 1872), SS. 56 (2), 65 . **I. L. R. 40 Bom. 570**

HUNDI.

——— **payable to bearer—**

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), SS. 30, 47, 59, 74, 94. **I. L. R. 39 Mad. 965**

——— *Suit on hundi—Hundi passed up-country and not made payable in Bombay—Consideration of the hundi being the balance of account between the Bombay merchant and the up-country merchant—Account settled up-country—Jurisdiction of the High Court—Letters Patent, cl. 12—Leave of the Court to sue—Cause of action.* The plaintiffs carrying on business in Bombay had dealings with the defendant residing and carrying on business at Bassum in Akola. The account between the parties was made up and settled at Bassum, as a result of which the defendant passed at Bassum two *hundies* drawn on his own firm for Rs. 900 and Rs. 1,000, respectively, in favour of the plaintiffs. On the failure of the defendant to meet the said *hundies* at the due dates, the plaintiffs brought a suit in the High Court at Bombay to recover the amount due on the same. The defendant pleaded that the Court had no jurisdiction to entertain the suit, as the moneys were not payable in Bombay. The plaintiffs contended that as the consideration of the *hundies* was the balance of the account due by the defendant to the plaintiffs in respect of the transactions effected in Bombay, the moneys were virtually payable in Bombay, and the material part of the cause of action arose in Bombay. *Held,* that the cause of action being founded upon the *hundies,* and the *hundies* not being made payable in Bombay, the Court had no jurisdiction to entertain the suit. *Per* MACLEOD J.—In giving leave under cl. 12 of the Letters Patent in suits on promissory notes, or *hundies,* I have always given leave when the money was payable in Bombay; and, in my opinion, if there are transactions in Bombay, which result in a credit in favour of the Bombay merchant against an up-country merchant, and if the Bombay merchant goes to settle his account up-country and accepts a promissory note or *hundi* in satisfaction of his account, then if he wants to sue on that note in Bombay he must take the precaution to see that the note is made payable in Bombay. SEWARAM GOKALDAS *v.* BAJRANGDAT HARDWAR (1916) . **I. L. R. 40 Bom. 473**

HUSBANDS' DEBT.

See HINDU LAW—WIDOW. **I. L. R. 39 Mad. 565**

HUSBANDS' DEBT—*concld.*

———— decree against widow for—

See HINDU LAW—WIDOW.
I. L. R. 39 Mad. 565

HYPOTHECATION.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 83 **I. L. R. 39 Mad. 579**

I

IDENTITY.

———— proof of—

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R. 43 Calc. 1128

ILLEGITIMATE SON.

See HINDU LAW—INHERITANCE.
I. L. R. 40 Bom. 369

———— gift to—

See HINDU LAW.
I. L. R. 39 Mad. 1029

———— of a Sudra—

See HINDU LAW—SUCCESSION.
I. L. R. 39 Mad. 136

ILLUSTRATIONS TO STATUTES.

See EVIDENCE. **L. R. 43 I. A. 256**

IMMOVEABLE PROPERTY.

See SALE. **I. L. R. 43 Calc. 790**

———— restoration of, to judgment debtor—

See LIMITATION ACT, 1908, SCH. I., ARTS. 165, 181. **I. L. R. 38 All. 339**

———— *Order regarding possession of, following acquittal in case under ss. 447 and 426 of the Penal Code, propriety of.*—The accused were tried for offences under ss. 447 and 426, Indian Penal Code, for having cut and removed some bamboos from a bamboo clump alleged by the complainant to be his. The trying Magistrate acquitted the accused but directed that the complainant was to retain possession of the bamboo clump until ousted by the Civil Court. The High Court set aside the order so far as it contained the direction about the bamboo clump. RADHA KANTA GUIN *v.* KARTIK GUIN (1916).
20 C. W. N. 1302

IMPARTIBLE ESTATE.

See HINDU LAW—IMPARTIBLE ESTATE.
I. L. R. 38 All. 590

IMPARTIBLE ZAMINDARI.

See HINDU LAW—MAINTENANCE.
I. L. R. 39 Mad. 396

IMPOSSIBLE CONTRACT.

See CONTRACT ACT (IX OF 1872), SS. 56, 65. **I. L. R. 40 Bom. 529**

IMPRISONMENT.

———— without first ordering attachment—

See CIVIL PROCEDURE CODE (ACT V OF 1908), R. 1 (*r*) AND O. XXXIX, R. 2, CL. (*3*). **I. L. R. 39 Mad. 907**

INAM.

See PERSONAL INAM.

———— grant of—

See CIVIL COURTS.
I. L. R. 39 Mad. 21

INAM SERVICE.

See MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT (II OF 1894), SS. 5 AND 10, CL. (*2*).
I. L. R. 39 Mad. 930

INCOME-TAX ACT (II OF 1886).

———— **Part IV, Sch. II, s. 3, cl.** (*5*)—*Annuity in Mysore Province—Annuitant resident in British India—Remittance by agent to her in British India—"Income", meaning of—Income, if taxable in British India.* Where a person was enjoying an annuity in Mysore Province, instalments of which were remitted by her agent to her while she was resident in British India, the remittances were "income" under Part IV of Sch. II of the Income-Tax Act, and these sums were "received in British India" within the definition contained in s. 3, cl. (*5*), of the Act and therefore taxable. NARASAMMAL *v.* THE SECRETARY OF STATE FOR INDIA. (1915) . . . . **I. L. R. 39 Mad. 885**

INCORPORATED COMPANY.

See SALE. **I. L. R. 43 Calc. 790**

INCUMBRANCE.

See SALE FOR ARREARS OF REVENUE.
I. L. R. 43 Calc. 779

———— *Absolute sale—Unregistered purchaser of portion of patni tenure, interest of, whether an incumbrance—Bengal Tenancy Act (VIII of 1885), ss. 161, 167—Civil Procedure Code (Act V of 1908), s. 98. Per* JENKINS C.J. and N. R. CHATTERJEA J. (MULLICK J. dissenting). The interest of an unregistered purchaser of a portion of a patni tenure is not an "incumbrance" within the meaning of s. 161 of the Bengal Tenancy Act. *Chundra Sakai* v. *Kalli Prosanno Chuckerbutty, I. L. R. 23 Calc. 254*, distinguished. A purchaser of a tenure at a sale held in execution of a rent decree is not therefore required to annul such an interest (*i.e.*, of an unregistered purchaser of a portion of a patni) under the provisions of s. 167 in order to get a clear title. ABDUL RAHMAN CHOWDHURI *v.* AHMADAR RAHMAN (1915).
I. L. R. 43 Calc. 558

INDIAN COMPANIES ACT.

See COMPANIES ACT.

INFANCY.

See EVIDENCE. **L. R. 43 I. A. 256**

INHERITANCE.

See ALIYASANTANA LAW.
I. L. R. 39 Mad. 12

See HINDU LAW—INHERITANCE.

See HINDU LAW—STRIDHAN.
I. L. R. 43 Calc. 64

INJUNCTION.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 115. **I. L. R. 40 Bom. 86**

See HINDU LAW—MARRIAGE.
I. L. R. 38 All. 520

See PENAL CODE (ACT XLV OF 1860), S. 188. **I. L. R. 39 Mad. 543**

See TEMPORARY INJUNCTION.

——— interlocutory, disobedience of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLIII, R. 1 (*r*) AND O. XXXIX, R. 2, CL. (*3*).
I. L. R. 39 Mad. 907

——— relief by—

See NUISANCE.
I. L. R. 40 Bom. 401

INQUIRY.

——— delegation of—

See SURETY. **I. L. R. 43 Calc. 1024**

INSOLVENCY.

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), SS. 6, 8, 25, 38, 39 (*2*), (*a*), (*b*), (*c*), (*d*), (*f*), (*j*).
I. L. R. 40 Bom. 461

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 37. **I. L. R. 38 All. 37**

1. ——— *Minor—Infant, whether can be adjudicated an insolvent.*—An infant cannot be adjudicated an insolvent under any circumstances. *Ex parte Jones, L. R. 18 Ch. D. 109*, followed. SITAL PRASAD AND OTHERS, *Re* (1916)
I. L. R. 43 Calc. 1157

2. ——— *Security for Costs—Appeal—Jurisdiction—Presidency Towns Insolvency Act (III of 1909), s. 8 (2) (b), Civil Procedure Code (Act V of 1908), ss. 117, 151 and O. XLI, r. 10—Practice.* On an application to the Court of Appeal for security for costs in an appeal from an order of a Judge in insolvency:—*Held*, that the Court has jurisdiction to entertain the application under s. 117 and O. XLI, r. 10 of the Code of Civil Procedure, read with s. 8 (*2*) (*b*) of the Presidency Towns Insolvency Act. *Sesha Ayyar* v. *Nagarathna Lala, I. L. R., 27 Mad. 121*, not followed. LAKHIPRIYA DASI *v.* RAIKISHORI DASI (1915).
I. L. R. 43 Calc. 243

3. ——— *Proceedings in Insolvency—Application to a wrong Court—Limitation Act (IX of 1908), s. 14, inapplicability of, to insolvency proceedings—Appeal, notice of, only to interested parties.* S. 14 of the Limitation Act does not apply to proceedings under the Provincial Insolvency Act. Hence an application filed in a wrong

INSOLVENCY—*concld.*

Court to declare a debtor an insolvent and re-presented to a right Court can be said to be presented only on the date of its re-presentation and if on such date of its re-presentation the application is not maintainable for any reason such as that the act of fradulent preference, as in this case, having occurred more than three months before the date of re-presentation, it is liable to be rejected. In an appeal by a creditor in insolvency proceedings, it is sufficient if notice is given of the appeal only to the parties directly affected by the order of the lower Court, and not to all creditors who may have any remote or possible interest in the result of the appeal. TRASI DEVA RAO *v.* PARAMESHWARAYA (1914). **I. L. R. 39 Mad. 74**

INSTALMENTS.

——— payment by—

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S. 15 B.
I. L. R. 40 Bom. 492

INSTRUMENT OF GAMING.

See BOMBAY PREVENTION OF GAMBLING ACT (BOM. IV OF 1887), S. 3.
I. L. R. 40 Bom. 263

INSTRUMENT OF TITLE.

See RAILWAY RECEIPT.
I. L. R. 40 Bom. 630

INSURANCE.

See SALE OF GOODS.
I. L. R. 40 Bom. 11

INTENTION.

See FRADULENT PREFERENCE.
I. L. R. 43 Calc. 640

See PENAL CODE (ACT XLV OF 1860) S. 456. **I. L. R. 38 All. 517**

See SECURITY TO KEEP THE PEACE.
I. L. R. 43 Calc. 671

——— evidence of—

See FORGERY. **I. L. R. 43 Calc. 783**

——— necessity of—

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R. 43 Calc. 591

——— of writer—

See PRESS ACT (I OF 1910), SS. 3 (*1*), 4 (*1*), 17, 19, 20 AND 22.
I. L. R. 39 Mad. 1085

INTENTION OF FOUNDER.

See MAHOMEDAN LAW—ENDOWMENT.
I. L. R. 43 Calc. 1085

INTEREST.

See DEMONSTRATIVE LEGACY.
I. L. R. 43 Calc. 201

See MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT (II OF 1894), SS. 5 AND 10, CL. (*2*).
I. L. R. 39 Mad. 930

INTEREST—*concld.*

See MAHOMEDAN LAW—DOWER.
I. L. R. 38 All. 581

See WILL. **I. L. R. 43 Calc. 201**

——— *Power of Court to grant relief, where interest unconscionable—Creditor, when his improper act or omission delays payment of debt.* Where delay in the payment of the principal debt is caused by some improper act or omission of the creditors, the accrual of interest will be suspended during such period as the debtor is so prevented. *Edwards* v. *Warden, 1 App. Cas. 281, Merry* v. *Ryves, 1 Eden. 1, Marlborough* v. *Strong, 4 Brown P. C. 539, Cameron* v. *Smith, 2 B. & Ald.* 305, *Bann* v. *Dalzel, Moo. & M. 228, Anderton* v. *Arrowsmith, 2 P. & D. 408, Laing* v. *Stone, 2 Man & Ry. 561; Moo. & M. 229, London, Chatham and Dover Railway Company* v. *South-Eastern Railway,* [*1891*] *1 Ch. 120,* and *Webster* v. *British Empire Mutual Life Assurance Co., 15 Ch. D. 169,* referred to. A Court is competent to grant relief where the rate of interest appears to the Court to be of a penal character, that is, so unconscionable and extravagant that no Court should allow it. *Khagaram Das* v. *Ramsankar Das, I. L. R. 42 Calc. 652. Abdul Majeed* v. *Khirode Chandra Pal, I. L. R. 42 Calc. 690, Bouwang* v. *Banga Behari Sen, 22 C. L. J. 311; 20 C. W. N. 408,* referred to. GOPESHWAR SAHA *v.* JADAV CHANDRA CHANDA (1915). **I. L. R. 43 Calc. 632**

INTERFERENCE.

——— **by High Court—**

See PRACTICE. **I. L. R. 40 Bom. 220**

INTERNATIONAL LAW.

See JURISDICTION.
I. L. R. 39 Mad. 661

INTERNMENT.

——— **object of—**

See ALIEN ENEMY, SUIT AGAINST.
I. L. R. 43 Calc. 1140

INTERPRETATION.

principle of—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 182. **I. L. R. 39 Mad. 923**

INTERROGATORIES.

——— *Method of administration—Disclosure of assets by affidavit in probate proceedings, how obtained—Civil Procedure Code (Act V of 1908), O. XI, r. 2.—Probate and Administration Act (V of 1881), s. 55.* O. XI of the present Code of Civil Procedure applies to proceedings in probate (*vide* section 55 of the Probate and Administration Act). Under that Order there are only two methods of discovery, one by interrogatories and the other by an order directing discovery of documents in the possession or power of the other side. An affidavit of assets actually received can, therefore, be obtained in probate proceedings by interrogatories only. Under r. 2 of O. XI, in India as in

INTERROGATORIES—*concld.*

England, the Judge has not any power to settle interrogatories, but he can only decide what should be administered. The *dicta* in English cases with regard to the more extensive powers of Courts in matters of probate, seem to imply that the strictest relevancy may not be required in interrogatories therein. ANILABALA DASI *v.* RAJENDRANATH DALAL (1915). **I. L. R. 43 Calc. 300**

INVESTIGATION.

See VALUATION OF SUIT.
I. L. R. 43 Calc. 225

IRREGULARITY.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 439, 422, 423.
I. L. R. 39 Mad. 505

ISTEMRARI MOKARARI.

See LEASE. **I. L. R. 43 Calc. 332**

J

JAIL REGISTER.

——— **extract from—**

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R. 43 Calc. 1128

JAJNAVALKYA.

——— **Ch. II, Vers. 117, 145—**

See HINDU LAW—STRIDHAN.
I. L. R. 43 Calc. 944

JOINDER OF CASES.

1. ——— *Offences against different persons by the same accused—Legality of joint trial—Criminal Procedure Code (Act V of 1898) s. 234—Practice.* S. 234 of the Criminal Procedure Code is not limited to the case of offences committed against the same person, but applies also where they are committed against different persons. *Manu Miya* v. *Empress, I. L. R. 9 Calc. 371,* and *Sri Bhagwan Singh* v. *Emperor, 13 C. W. N. 507,* followed. *Empress* v. *Murari, I. L. R. 4 All. 147, Nanda Kumar Sircar* v. *Emperor, 11 C. W. N. 1128, Ali Mahomed* v. *Emperor, 13 C. W. N. 418,* dissented from. *Queen-Empress* v. *Juala Prasad, I. L. R. 7 All. 174,* referred to. At the same time the powers under the section should be used with great care and caution where there are different complainants. SUBEDAR AHIR *v.* EMPEROR (1915). . . **I. L. R. 43 Calc. 13**

2. ——— *Offences of the same kind committed in respect of different persons—Legality of joint trial—Criminal Procedure Code, ss. 234 and 239—Practice.* The words "offences of the same kind" used in s. 234 of the Code of Criminal Procedure, and as defined by sub-cl. (2) of the said section, do not imply that the offences should necessarily have been committed against the same person. Where, therefore, there were six

JOINDER OF CASES—*concld.*

persons accused of having been jointly concerned in carrying on a systematic swindle, and three joint charges were framed against all the accused: *Held*, there was nothing illegal in the procedure. *Subedar Ahir* v. *Emperor, I. L. R. 43 Calc. 13*, followed. *Empress* v. *Murari, I. L. R. 4 All. 147*, dissented from. EMPEROR *v.* BECHAN PANDE (1916). . . . **I. L. R. 38 All. 457**

JOINT BOND.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 462. **I. L. R. 39 Mad. 409**

JOINT DEBTORS.

——— suit for contribution between—

See LIMITATION. **I. L. R. 39 Mad. 288**

JOINT ESTATE.

——— *Private partition—Encumbrance by co-sharer—Holding in severalty—Tenancy in common—Partition by Collector, effect of—Estates Partition Acts (Beng. Act V of 1897, s. 99, and Beng. Act VIII of 1876, s. 128)—Practice—Abandonment of plaintiff's case and adoption by him of defendant's.* S. 99 of Beng. Act V of 1897 applies only where the lands are held *jointly* by the proprietors and *not in severalty* in pursuance of a private arrangement between the parties. *Hridoy Nath* v. *Mohobutnessa, I. L. R. 20 Calc. 285, Aimanaddi Patri* v. *Nabin Chandra Gope, 11 C. L. J. 95, Syed Abdul Latif* v. *Amanaddi Patwari, 15 C. W. N. 426*, followed. *Joy Sankari Gupta* v. *Bharat Chandra Bardhan, I. L. R. 26 Calc. 434*, distinguished. Where a section of an Act (here, s. 128 of Beng. Act VIII of 1876) which was received a judicial construction [*Hridoy Nath* v. *Mohobutnessa*] is re-enacted in the same words, such re-enactment [here, s. 99 of Beng. Act V of 1897] must be treated as a legislative recognition of that construction. *Mansell* v. *Regina, 8 E. & B. 54, Ex parte Campbell, L. R. 5 Ch. App. 703*, followed. When on a partition by the Collector, any land of an undivided joint estate, which had been encumbered by any co-sharer, is allotted to another co-sharer, the latter takes it free from the encumbrance so created. *Byjnath* v. *Ramoodeen, L. R. 1 I. A. 106*, followed. The decision in *Sheikh Ahmedoolah* v. *Sheikh Ashraf Hossein, 13 W. R. 447*, [where the lands were held in *severalty*] which was followed in *Hridoy Nath* v. *Mohobutnessa, I. L. R. 20 Calc. 285*, is not, as is assumed in *Joy Sankari Gupta*, v. *Bharat Chandra Bardhan, I. L. R. 26 Calc. 434*, inconsistent with, and has not consequently been overruled in effect by the decision of the Judicial Committee in *Byjnath* v. *Ramoodeen, L. R. 1 I. A. 106*, [where the lands were held in common tenancy.] *Byjnath* v. *Ramoodeen, L. R. 1 I. A. 106, Venkatarama* v. *Esumsa, I. L. R. 33 Mad. 429, Sheikh Nura* v. *Baikuntanath Roy, 21 C. L. J. 596, Brojo Nath Saha* v. *Dinesh Chandra Neogi, 21 C. L. J. 599, Tarikanta* v. *Ishur Chundra, 21 C. L. J. 603, Joy Sankari Gupta* v. *Bharat Chandra Bardhan, I. L. R. 26 Calc. 434*, distinguished as cases where land was held in common tenancy. A plaintiff cannot be allowed to abandon his own case, adopt that of the defendant and claim relief on that footing *Shibkristo Sircar* v. *Abdul Hakeem, I. L. R. 5 Calc. 602, Ramdoyal* v. *Junmenjoy, I. L. R. 14 Calc. 791, Balmukund Kesurdas* v. *Bhagwandas Kesurdas, 15 Bom. L. R. 209*, followed. But that does not prevent the defendant from contending that even on the facts found the plaintiff's claim [here, for ejectment] cannot be sustained. NAGENDRA MOHAN ROY *v.* PYARI MOHAN SAHA (1915). . **I. L. R. 43 Calc. 103**

JOINT ESTATE—*concld.*

JOINT FAMILY.

See HINDU LAW—JOINT FAMILY.

See HINDU LAW—PARTITION.

I. L. R. 43 Calc. 459

See JOINT HINDU FAMILY.

JOINT-FAMILY PROPERTY.

See AGRA TENANCY ACT (II OF 1901), S. 22 . . . **I. L. R. 38 All. 325.**

See HINDU LAW—SUCCESSION.

I. L. R. 39 Mad. 136

JOINT HINDU FAMILY.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), SS. 366, 371.

I. L. R. 40 Bom. 248

See GUARDIAN *ad litem.*

I. L. R. 38 All. 315

See HINDU LAW—JOINT-FAMILY PROPERTY. . . **I. L. R. 38 All. 126**

JOINT IMMOVEABLE PROPERTY.

——— partition of—

See BENAMIDAR. **I. L. R. 43 Calc. 504**

JOINT JUDGMENT-DEBTORS.

——— *Release of some—Liability of others—English law—Indian Contract Act (IX of 1872), s. 44—Rule of justice, equity and good conscience—Rule of English law, applicability of.* A release by a decree-holder of some of the joint judgment-debtors from liability under the decree, does not operate as a release of the other judgment-debtors from liability under the decree. The rule of English law should not be applied, in India, as it is based on the substantive rule applicable to contractual joint-debtors, which is different under s. 44 of the Indian Contract Act, and is not in consonance with justice, equity and good conscience. *Quære:* Whether the English law should be applied in cases arising within the original jurisdiction of the High Courts. *Chinnamannar and Gurusami* v. *Sadasiva, I. L. R. 5 Mad. 387*, referred to. MOOLCHAND *v.* ALWAR CHETTY (1915).

I. L. R. 39 Mad. 548

JOINT-PROBATE.

See HINDU LAW—WILL.

I. L. R. 39 Mad. 365

JOINT PROPERTY.

——————— *Co-owners — Purchase of an undivided moiety—Occupation of the other moiety in virtue of a lease deed—Subsequent holding over—Limitation Act (IX of 1908), Arts. 110, 115 and 120.* Arts. 110 and 115 of the Limitation Act presuppose the existence of a contract, express or implied; where there is no such contract or any relationship of landlord and tenant subsisting between the parties or no holding over as tenant, but when the relationship is referable to rights as co-owners, a suit for recovery of the moiety of a house and rent for a period of six years is governed by art. 120 of the Limitation Act. *Robert Watson & Co., Ld.* v. *Ram Chand Dutt, I. L. R. 23 Calc. 790,* applied. *Quære:* Whether the fiction of tenancy by sufferance should be kept up after the passing of the Transfer of Property Act. *Subhraveti Ramiah* v. *Gundala Ramanna, 1 Mad. W. N. 145,* referred to. MADAR *v.* KADER MOIDEEN (1914). **I. L. R. 39 Mad. 54**

JOINT TORT-FEASORS.

See CONTRIBUTION. **I. L. R. 38 All. 237**

JOINT TRIAL.

See CRIMINAL PROCEDURE CODE, S. 239. **I. L. R. 38 All. 311**

See JOINDER OF CASES. **I. L. R. 43 Calc. 13** **I. L. R. 38 All. 457**

——————— of two separate calendar cases—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 421, 233, 537. **I. L. R. 39 Mad. 527**

JOSHI VATANDAR.

See VATANDAR JOSHI. **I. L. R. 40 Bom. 112**

JUDGE.

——————— order of a single—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 435, 439, 133. **I. L. R. 39 Mad. 537**

——————— order of a single, in revision—

See LETTERS PATENT (24 & 25 VICT., C. 104, S. 15). **I. L. R. 39 Mad. 539**

JUDGMENT.

See ATTACHMENT BEFORE JUDGMENT.

See CRIMINAL PROCEDURE CODE, S. 110. **I. L. R. 38 All. 393**

See JUDGMENT OF A SINGLE JUDGE.

See LETTERS PATENT (MADRAS), S. 15. **I. L. R. 39 Mad. 235**

JUDGMENT DEBT.

——————— payment of a portion of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 89 (*b*). **I. L. R. 39 Mad. 429**

JUDGMENT-DEBTOR.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 89. **I. L. R. 40 Bom. 557**

See DEPOSIT IN COURT. **I. L. R. 43 Calc. 100**

——————— examination of—

See PRACTICE. . **I. L. R. 43 Calc. 285**

——————— payment by, as interest—

See EXECUTION OF DECREE. **I. L. R. 43 Calc. 207**

——————— security for default of—

See CIVIL PROCEDURE CODE (1908), S. 145; O. XXXIV, R. 14. **I. L. R. 38 All. 327**

JUDGMENT OF A SINGLE JUDGE.

See LETTERS PATENT APPEAL. **I. L. R. 43 Calc. 90**

JUDICIAL COMMISSIONER.

See JURISDICTION. **I. L. R. 43 Calc. 136**

JUDICIAL PROCEEDINGS.

——————— stage in a—

See SANCTION FOR PROSECUTION. **I. L. R. 43 Calc. 597**

JURISDICTION.

See JURISDICTION AND CLAIM.

See JURISDICTION OF CIVIL COURT.

See JURISDICTION OF DISTRICT COURT.

See JURISDICTION OF HIGH COURT.

See JURISDICTION OF MAGISTRATES.

See AGRA TENANCY ACT (II OF 1901), SS. 58, 177 (*e*). **I. L. R. 38 All. 465**

See BOMBAY HEREDITARY OFFICES ACT (BOM. III OF 1874), SS. 25, 36. **I. L. R. 40 Bom. 55**

See COMPANIES ACT (VII OF 1913), S. 207 **I. L. R. 38 All. 407**

See COURT FEES ACT (VII OF 1870), S. II, ART. 17. **I. L. R. 39 Mad. 602**

See EUROPEAN BRITISH SUBJECT. **I. L. R. 39 Mad. 942**

See INSOLVENCY. **I. L. R. 43 Calc. 243**

See MADRAS ESTATES LAND ACT (I OF 1908), S. 189. **I. L. R. 39 Mad. 239**

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882), S. 19, CL. (5). **I. L. R. 39 Mad. 219**

See REVIVOR. **I. L. R. 43 Calc. 903**

See STAY OF SUIT. **I. L. R. 43 Calc. 144**

JURISDICTION—*contd.*

——— of foreign Court—

See FOREIGN DECREE, EXECUTION OF.
I. L. R. 39 Mad. 24

——— of subordinate Courts to take proceedings under section 14—

See LEGAL PRACTITIONERS ACT (XVIII 1879), S. 14. **I. L. R. 39 Mad. 1045**

——— ouster of—

See CIVIL COURTS. **I. L. R. 39 Mad. 21**

——— protest against—

See FOREIGN COURT.
I. L. R. 39 Mad. 733

——— submission to, whether voluntary—

See FOREIGN DECREE, EXECUTION OF.
I. L. R. 39 Mad. 24

——— voluntary submission to—

See FOREIGN COURT.
I. L. R. 39 Mad. 733

1. ——— *Chota Nagpur Tenancy Act (Beng. VI of 1908), ss. 87, 258, 264—Revenue Officer—Judicial Commissioner—Government's power to appoint the officer to hear appeals.* S. 87 of the Chota Nagpur Tenancy Act provides for a suit before a Revenue Officer and for an appeal in the prescribed manner to the prescribed officer from decisions passed under sub-s. (*f*) that is a decision on any other matter not referred to in cls. (*a*) to (*c*). The rules made by the Government provide that suits under s. 87 of the Act shall be tried in all respects as suits between the parties. Section 264 (viii) of the Act gives the Government power to prescribe the officer to hear appeals, and the Judicial Commissioner is the prescribed officer under the rules. The provisions for appeal appear to have been overlooked in s. 258 and it must, therefore, be understood that the special Appellate Court in Revenue Cases, in deciding a dispute under this Act, performs the functions of a Revenue Officer. GANESH NARAIN SAHI DEO *v.* PROTAP UDAI NATH SAHI DEO (1915).
I. L. R. 43 Calc. 136

2. ——— *Court of limited pecuniary jurisdiction—Mesne profits amounting to Rs. 60,000, antecedent to suit and pendente lite, whether can be investigated by Munsif—Civil Procedure Code (Act XIV of 1882), ss. 50, 211, 212—Civil Courts Act (XII of 1887), ss. 7, cl. (1), 18.* When a plaintiff institutes his suit for possession and mesne profits antecedent to the suit in a Court of limited pecuniary jurisdiction, he may be rightly deemed to have limited his claim to the maximum amount for which that Court can entertain a suit. In fact in such a case if the plaintiff subsequently put forward a claim in excess of the jurisdiction of the Court, he may be justly required to remit the excess because he had with his eyes open brought his suit deliberately in a Court of limited pecuniary jurisdiction. *Golap Singh* v. *Indra Kumar Hazra, 13 C. W. N. 493; 9 C. L. J. 367*, followed. *Sudarshan Dass* v. *Rampershad, 7 All. L. J. R. 963*, dissented from. But mense profits antecedent to the suit and mense profits *pendente lite* stand on very different grounds. A Munsif cannot entertain an application for investigation of mesne profits *pendente lite* when the claim was laid over Rs. 60,000. The proper course to follow was to direct the return of the plaint in so far as it embodied a prayer for assessment of mesne profits from the institution of the suit to the date of delivery of possession, for presentation to the Court of competent pecuniary jurisdiction, *i.e.*, the Court of the Subordinate Judge. *Rameswar Mahton* v. *Dilu Mahton, I. L. R. 21 Calc. 550*, distinguished. BHUPENDRA KUMAR CHAKRAVARTY *v.* PURNA CHANDRA BOSE (1910).
I. L. R. 43 Calc. 650

JURISDICTION—*concld.*

3. ——— *Ruling Prince or Chief—Consent of Local Government—Submission to jurisdiction—Waiver—International Law—Civil Procedure Code (Act V of 1908), s. 86, construction of.* Where His Highness Rajah of Cochin was impleaded as a defendant in a suit in the capacity of a trustee of a temple, without the consent of the Local Government under s. 86 of the Code of Civil Procedure (Act V of 1908): *Held*, that the suit was not maintainable as against the Rajah of Cochin in the absence of consent of the Local Government under s. 86 of the Code of Civil Procedure. *Per* OLDFIELD, J.—The recognition of cases of waiver, as excepted from the ordinary provision of International Law as understood in England, cannot be imported into the clear language of the Indian Code. *Chandulal* v. *Awad bin Umar Sultan, I. L. R. 21 Bom. 351*, dissented from. *Per* SADASIVA AYYAR, J.—Objection to jurisdiction is enough to show that there was no voluntary submission by the defendant to the jurisdiction of the Court. *Parry & Co.* v. *Appasami Pillai, I. L. R. 2 Mad. 407*, approved. *Veeraraghava Iyer* v. *Muga Sait, I. L. R. 39 Mad. 24*, referred to. NARAYANA MOOTHAD *v.* THE COCHIN SIRCAR (1915).
I. L. R. 39 Mad. 661

JURISDICTION AND CLAIM.

——— denial of—

See FOREIGN DECREE, EXECUTION OF.
I. L. R. 39 Mad. 24

JURISDICTION OF CIVIL COURT.

See ADEN SETTLEMENT REGULATION (VII OF 1900), S. 13.
I. L. R. 40 Bom. 446

See EX-PARTE DECREE.
I. L. R. 39 Mad. 583

See RIGHT OF SUIT.
I. L. R. 40 Bom. 200

JURISDICTION OF DISTRICT COURT.

See GUARDIANS AND WARDS ACT (VIII OF 1890), SS. 12, 13, 17, 19, 24, 25.
I. L. R. 40 Bom. 600

JURISDICTION OF HIGH COURT.

See HUNDI, SUIT ON.
I. L. R. 40 Bom. 473

JURISDICTION OF MAGISTRATE.

See FALSE INFORMATION.
I. L. R. 43 Calc. 173

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R. 43 Calc. 153

JURY.

——— charge to—misdirection—

See PRACTICE. I. L. R. 40 Bom. 220

——— *Misdirection to—Confession before village salish—Evidence Act (I of 1872), s. 24—Person in authority— Indian Penal Code (Act XLV of 1860), ss. 302/115, 328/116—Abetment of murder by poisoning and causing hurt by means of poison—Absence of evidence as to amount of poison proposed to be administered.* The accused was charged under ss. 302/115, and 328/116, Indian Penal Code, the case for the prosecution being that the accused suspecting an intrigue between her husband and a certain woman gave a powder to a girl with instructions to give it to the woman. Owing to the intervention of a relative of the girl the powder was not given to the woman. The accused asked the girl to give her back the powder and the girl returned a portion of it. On the matter getting about in the village a *salish* was summoned before whom the accused made a confession and produced the powder. The chemical analyser's report was that traces of white arsenic were found in the powder but it was not disclosed how much arsenic was there. It was found that the president and members of the *salish* told the accused that if she confessed they would compromise the matter. The Sessions Judge in charging the jury said that the confession was not inadmissible because the members of the *salish* were not persons in authority and the accused was not then charged with any offence. *Held*, that the Sessions Judge misdirected the jury in the matter of the confession. The president of a *panchayet* may be a person in authority within the meaning of s. 24 of the Evidence Act, and to tell the jury that he was not, was clearly erroneous, the matter depending on a question of fact, *viz.*, whether the confession was caused by any inducement, threat or promise, having reference to the charge against the accused. *Nazir Jharudar* v. *The Emperor, 9 C. W. N. 474*, and *the Emperor* v. *Jasha Bewa, 11 C. W. N. 904*, referred to. That the *salish* being summoned to consider the case which was being made against the accused, she was before the *salish* on that charge and the Sessions Judge was wrong in directing otherwise. That having regard to the inducement offered by the president and members of the *Salish* to the accused it is extremely doubtful whether the confession should have been allowed to be placed before the jury at all. It certainly ought not to have been placed before them without an explanation as to how they should value it having regard to the circumstances in which it was made. That the chemical analysis not disclosing how much arsenic was found in the powder, there was no evidence on the record against the accused as to the amount of poison which was proposed to be administered and it was doubtful whether the case would come under s. 302 or s. 328, Indian Penal Code. KING-EMPEROR *v.* AUSHI BIBI (1915). . . . 20 C. W. N. 512

JUSTICE, EQUITY AND GOOD CONSCIENCE

——— rule of—

See JOINT JUDGMENT-DEBTORS.
I. L. R. 39 Mad. 548

JUSTICE OF THE PEACE.

See EUROPEAN BRITISH SUBJECT.
I. L. R. 39 Mad. 942

JUSTIFICATION.

See TORT. I. L. R. 39 Mad. 433

K

KARNAVAN.

See MALABAR TARWAD.
I. L. R. 39 Mad. 918

KARTA.

See HINDU LAW—PARTITION.
I. L. R. 43 Calc. 459

KAZI.

——— discretion of—

See MAHOMEDAN LAW—ENDOWMENT.
I. L. R. 43 Calc. 1085

KHANDESH DISTRICT.

See PRE-EMPTION.
I. L. R. 40 Bom. 358

KHOTI SETTLEMENT ACT (BOM. I OF 1880).

——— s. 9—

See RES JUDICATA.
I. L. R. 40 Bom. 675

KIDNAPPING.

See PENAL CODE (ACT XLV OF 1860), SS. 361, 366, 109. I. L. R. 38 All. 664

KUDIVARAM RIGHT.

——— ownership of—

See CIVIL COURTS.
I. L. R. 39 Mad. 21

L

LABOURER.

——— prosecution of—

See MADRAS PLANTERS' LABOUR ACT (MAD. I OF 1903), SS. 24, 35.
I. L. R. 39 Mad. 889

LAKHERAJ.

See ASSESSMENT.
I. L. R. 43 Calc. 973

LAMBARDAR.

——— **suit against, for profits—**

See AGRA TENANCY ACT (II OF 1901), S. 164. . **I. L. R. 38 All. 223**

LAND.

——— **agreement to sell, not creating any interest therein—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 54. **I. L. R. 39 Mad. 462**

——— **sale of—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 55 (*4*).

I. L. R. 39 Mad. 997

LAND ACQUISITION.

See LAND ACQUISITION ACT, 1894.

1. ——— *Godowns used as servants' residence, whether part of house or building —Acquisition of such godown alone, legality of—Land Acquisition Act (I of 1894), ss. 49 (1), 54—Practice—Appeal.* Godowns necessary as residence for servants are part and parcel of a building [within the meaning of s. 49 (*1*) of the Land Acquisition Act] being a most important part of that building for the purpose of letting it out to gentlemen as a place of residence. The acquisition of such godowns would thus be an acquisition of a part of a house contrary to the provisions of the Act. It has never been doubted that an appeal would lie in the case of such an order under that section *Hasan Molla* v. *Tasiruddin, I. L. R. 39 Calc. 393*, distinguished. DALCHAND SINGHI *v.* THE SECRETARY OF STATE FOR INDIA (1916).

I. L. R. 43 Calc. 665

2. ——— *Court, if may determine question of title—Claims to compensation by Zemindar as against person holding under a lakhiraj title—Onus of proof.* A purchaser of an entire estate sold for arrears of revenue suing to recover land claimed by the defendant as *lakhiraj* must prove a *primâ facie* case that his *mal* land has, since 1790, been converted into *lakhiraj*. The fact that the lands are within the ambit of the estate is not sufficient to meet this burden. Whether in a particular case, the plaintiff has been able to prove such a *primâ facie* case would depend upon its own circumstances. Where the question of title to a plot of land arose between claimants to compensation money paid by Government on acquisition thereof under the Land Acquisition Act, one being the purchaser of the estate at a sale for arrears of land revenue, whilst the other was holding it as *lakhiraj*: *Held*, that the former was in the position of the plaintiff and the burden of proof as stated above was on him. *Harihar Mookerjee* v. *Madab Chandra Babu, 14 Moo. I. A. 152*, relied on. A Land Acquisition Court has jurisdiction to determine a conflict of title between rival claimants. KRISHNA KALYANI DASI *v.* R. BRAUNFELD (1915). . **20 C. W. N. 1028**

3. ——— *Land Acquisition by Government—Right to compensation—Possession for 12 years by non-payment of rent—Title by adverse possession.* On the acquisition of a piece of land under the Land Acquisition Act it was found that the person in possession had taken possession of it on the death of the last male owner and held possession for more than 12 years without payment of rent. He asserted that he held the land under another person and not under the rival claimant who was the reversionary heir of the last male owner. *Held*, that the person in such possession was entitled to the full compensation paid for its compulsory acquisition, having acquired the right to hold the land rent-free by twelve years' adverse possession. RAJBANS SAHAY *v.* RAI MAHABIR PRASAD (1916). . . . **20 C. W. N. 828**

LAND ACQUISITION—*concld.*

LAND ACQUISITION ACT (I OF 1894).

See MADRAS ESTATES LAND ACT (I OF 1908), S. 6, SUB-S. (*6*) AND S. 8.

I. L. R. 39 Mad. 944

See RAILWAY. **L. R. 43 I. A. 310**

——— **s. 30—**

——— *Reference to Civil Court if lies after payment of compensation to one party by Collector—Order by Civil Court directing Government to pay compensation to party found entitled to it and to realise the amount wrongly paid from the other party, propriety of—Facts to be proved by claimant in order to be entitled to compensation—Road-cess return, value of, to show status as lakherajdar.* The appellant who was the first party claimed that he had a *lakheraj* title to a land acquired under the Land Acquisition Act. The second party claimed as *putnidars* and *dargutnidars*. The Collector made an award in favour of the first party and the amount of compensation was actually paid to him. On a reference to the Civil Court under s. 30 of the Act the Subordinate Judge found in favour of the second party and directed the Government to pay the compensation to them and to realise the amount previously paid to the first party from him. *Held*, that though the Land Acquisition Act clearly contemplates that when there is a dispute as to apportionment the reference to the Civil Court under s. 30 should be made before any payment has been made, still there is nothing in the Act that prohibits the Land Acquisition Collector from making the reference after payment of compensation to one of the parties. When such a reference has been made, it is undesirable that the party who succeeds in showing that the Collector's order was wrong should have to resort to a regular suit to compel the opposite party to refund the compensation to which he has been held not to be entitled, nor can the rights of the opposite party be in any way prejudiced by the reduction of litigation. That the omission of the appellant to file any road-cess return with regard to the land went strongly against his claim to have asserted a *lakheraj* title to it. The High Court varied the decree of the Subordinate Judge and ordered the first party to pay the amount of compensation received by him to the second party

LAND ACQUISITION ACT (I OF 1894)—*concld.*

——— s. 30—*concld.*

with interest at 6 per cent. per annum from the date of withdrawal. *Held*, further, that a claimant in a Land Acquisition proceeding can get no share of the compensation without establishing either title to or possession of the land acquired. SATISH CHANDRA SINGHA *v.* ANANDA GOPAL DAS (1916).

20 C. W. N. 816

——— s. 32—*Bhagdari and Narvadari Act (Bom. Act V of 1862), s. 3—Unrecognised sub-division of a narva holding —Compulsory acquisition.* The provisions of s. 32 of the Land Acquisition Act (I of 1894) cannot be made applicable to a case where the land compulsorily acquired is an unrecognised sub-division of a *narva* holding. *Per* BATCHELOR, J. "The only case contemplated by the draughtsman (in s. 32 of the Land Acquisition Act, 1894) was the case where the legal estate was in a person possessing only a limited interest, while outstanding rights were in a beneficiary or revisioner who, upon the exhaustion of the limited estate, would become, in the words of the clause, 'absolutely entitled' to the land." ASSISTANT COLLECTOR OF KAIRA *v.* VITHALDAS (1915).

I. L. R. 40 Bom. 254

——— ss. 49 (*1*), 54—

See LAND ACQUISITION.

I. L. R. 43 Calc. 665

——— s. 53—

See RECORDS, POWER TO CALL FOR.

I. L. R. 43 Calc. 239

LANDHOLDER.

See MADRAS ESTATES LAND ACT (MAD. I OF 1908) **I. L. R. 39 Mad. 1018**

LAND IMPROVEMENT LOANS ACT (XIX OF 1883).

——— s. 7—

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).

I. L. R. 40 Bom. 483

LANDLORD AND TENANT.

	COL.
1. AGRICULTURAL LEASE . .	227
2. EJECTMENT	228
3. INTEREST	228
4. OCCUPANCY RIGHT . .	229
5. RENT	229
6. TRANSFER	230

See EVIDENCE ACT (I OF 1872), S. 16.

I. L. R. 38 All. 226

1. AGRICULTURAL LEASE.

——— *Agricultural lease—Days of grace for payment of rent—Forfeiture clause for non-payment of rent after days of grace—Relief against forfeiture.* Courts in India have power to relieve against forfeiture for non-payment of rent even in cases where a period of grace is allowed for payment by the lease deed; and this rule applies equally to a lease (as in this case) for agricultural purposes. Whether relief against forfeiture should in any particular case be given depends on the facts of that case. *Per* SESHAGIRI AYYAR J.—It is open to Courts to look at legislative provisions regarding the liability of other lessees and tenants as embodying the principles of justice, equity and good conscience. *Per* NAPIER J.—When the statute specifically excludes one transaction of the same class as that which is being dealt with from its purview, the doctrine cannot be applied. The Transfer of Property Act cannot be looked to for guidance in the matter of an agricultural lease. APPAYYA SHETTY *v.* MAHAMMAD BEARI (1915). . **I. L. R. 39 Mad. 834**

2. EJECTMENT.

——— *Suit for—Lease of land for residential purposes—Law before the Transfer of Property Act (IV of 1882)—Onus to prove transferability—Presumption of transferability, if arises from long continued possession.* The effect of the recent decisions is that when a landlord sues a person on the allegation that he is a trespasser and that person sets up a transfer from a tenant, it is for the latter to prove, first of all, the tenancy and, secondly, the validity of the transfer. With regard to tenancies of homestead land created before the Transfer of Property Act, the tendency of these decisions has been to establish that in the absence of evidence to the contrary, the burden of proof being upon the tenant, these tenancies are non-transferable. *Benee Madhub* v. *Joykissen, 12 W. R. 495*, and *Durga Pershad Misser* v. *Bindaban Sookul, 15 W. R. 274*, referred to and doubted. The only exception made to the above rule is when there has been an erection of pucca buildings or a standing by on the part of the landlord while the tenant spends a large sum upon the land. *Madhu Sudan Sen* v *Kamini Kanta Sen, I. L. R. 32 Calc. 1023*: s. c. *9 C. W. N. 895*, and *Nabu Mandal* v. *Cholim Mullik, I. L. R. 25 Calc. 896*: s. c. *2 C. W. N. 405*, relied on. Mere long continued possession cannot give rise to a presumption of transferability. AMBICA PROSAD SINGH *v.* BALDEOLAL (1916).

20 C. W. N. 1113

3. INTEREST.

——— *Kabuliyat containing stipulation to pay excessive rate of interest—Assurance by landlord at the time of execution of kabuliyat that convenant will not be enforced, effect of, on the document—Evidence Act (I of 1872), s. 92, prov. 1.* A *kabuliyat* for a period of one year provided that on default of payment of rent the arrears would carry interest at 75 per cent. per annum. The tenant held over after one year. On a suit for rent on the basis of the *kabuliyat* the tenant pleaded that before the *kabuliyat* was executed by him,

LANDLORD AND TENANT—*contd.*

3. INTEREST—*concld.*

the landlord assured him that the covenant for payment of interest at 75 per cent. would not be enforced. This allegation was found to be true. *Held*, that under the circumstances the *kabuliyat* was not the real agreement between the parties, having been induced by fraudulent misrepresentation, and the tenant was not liable to pay interest claimed on the basis of the *kabuliyat*. S. 92, Prov. 1 of the Evidence Act referred to. NADIA CHAND SAHA *v.* BIRENDRA CHANDRA DUTT (1915).

20 C. W. N. 1067

4. OCCUPANCY RIGHT.

——————— *Purchase of raiyats' interest by sole Landlord—Occupancy holding and occupancy right—Transferability—Merger—Under-raiyat—Notice to quit—Ejectment—Bengal Tenancy Act (VIII of 1885) as amended by Bengal Act I of 1907, ss. 22, cl. (2) 49, 85 and 167.* The *raiyats* of certain lands in dispute executed a mortgage of their lands and put the mortgagee in possession. Subsequently the mortgagee settled the lands with under *raiyats*. The superior landlord then brought a suit for rent against his *raiyats* and purchased the holding at a sale for arrears of rent. Thereafter, the landlord sold the permanent *raiyati* to one Meajan, who, after having taken a lease from the landlord and after having redeemed the mortgage, sold the same to the present plaintiffs. The plaintiffs, thereupon, brought a suit to eject the under-*raiyats*. *Held*, that the occupancy still continued to exist after the purchase by the landlord. *Akhil Chandra Biswas* v. *Hasan Ali Sadagar, 19 C. W. N. 246*, followed. *Held*, also, that the landlord was able to transfer the holding to Meajan, through whom it came to the plaintiffs. *Held*, also that the under-*raiyats* continued to be under-*raiyats* and were duly served with notice to quit and must be ejected. YAKUB ALI *v.* MEAJAN (1915). . . . **I. L. R. 43 Calc. 164**

5. RENT.

——————— *Suit for rent—Non-occupancy raiyat—Lease for a term—Suspension of portion of rent during the term—Stipulation for payment of rent at full rate after expiry of term—Agreement, if invalid—Acceptance of rent at reduced rate after expiry of the term, if deprives landlord of his right to claim rent at the stipulated rate—Waiver—Intention of parties.* Where in a *kabuliyat* for a term executed by a non-occupancy raiyat a certain rent was settled out of which a portion was kept in suspension and the balance was stated to be the rent payable for the term, and it was further stipulated that if after expiry of the term the raiyat continued in occupation without taking a fresh settlement he would be liable to pay rent at the full rate; and after the expiry of the term the raiyat remained in occupation without taking a fresh settlement and rent was then realised from the tenant at the reduced rate for a few years and thereupon the landlord sued, for rent at the full

LANDLORD AND TENANT—*concld.*

5. RENT—*concld.*

rate: *Held*, that the agreement did not contravene the provisions relating to non-occupancy raiyats and was not invalid. *Held*, also, that the landlord by accepting rent at the reduced rate was not deprived of his right to claim rent at the rate stipulated in the *kabuliyat* and was entitled to receive rent at the full rate. *Durga Prasad Singh* v. *Rajendra Narayan Bagchi, I. L. R. 41 Calc. 493*: s. c. 18 *C. W. N. 66*, and *Baijnath Prosad* v. *Raghunath Rai, 16 C. W. N. 496*, followed. *Held*, further, that evidence that since the execution of the *kabuliyat* the tenant paid rent at a lower rate than that stated in the *kabuliyat* was admissible to shew the intention of the parties that the *kabuliyat* was not intended to be acted upon or that there had been a waiver of the terms of the lease. *Beni Madhab Gorani* v. *Lalmoti Dasi, 6 C. W. N. 242*, followed. KAILASH CHANDRA SAHA v. DARBARIA SHEIKH (1915) **20 C. W. N. 347**

6. TRANSFER.

——————— *Non-transferable occupancy holding—Occupancy holder transferring part of his holding without the knowledge or consent of the landlord—Transfer, validity of—Non-payment of rent by tenant—Disclaimer—Suit by landlord for khas possession of the transferred portion.* The holder of a non-transferable occupancy holding has no power to create by transfer a title good against his landlord. Where a tenant transferred by a deed of sale a portion of his non-transferable occupancy holding without his landlord's knowledge or consent and subsequently refused to pay the rent of the transferred portion to the landlords on the ground that it was sold and relinquished in favour of the purchaser, paying rent only for the portion of the holding which remained in his possession, and where such apportionment of the rent was accepted by the landlords: *Held*, that such an act on the part of the tenant amounted to a disclaimer to all right, title and interest to the transferred part, and that the part transferred was at the disposal of the landlords, unless any third person could make out a good title to possession as against them. KUNJA KISHORE PAL CHOWDHURY *v.* BAMA SUNDARI DASEE (1915).

I. L. R. 43 Calc. 878

LAND REVENUE CODE (BOM. ACT V OF 1879).

——————— **ss. 56, 153—**

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).

I. L. R. 40 Bom. 483

LAWFUL APPREHENSION.

——————— **resistance to—**

See RESCUE FROM LAWFUL CUSTODY.

I. L. R. 43 Calc. 1161

LEASE.

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S. 3, CL. (*y*) AND S. 10A. **I. L. R. 40 Bom. 397**

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 92, 93. **I. L. R. 40 Bom. 22**

See MINING LEASE.

See PERMANENT LEASE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 105, 107. **I. L. R. 38 All. 178**

——— by Mahomedan co-heirs—

See TENANTS-IN-COMMON. **I. L. R. 39 Mad. 1049**

——— determined by one lessor—

See TENANTS-IN-COMMON. **I. L. R. 39 Mad. 1049**

——— for a term—

See LESSOR AND LESSEE. **I. L. R. 39 Mad. 1042**

——— for a term of years, construction of—

See CONSTRUCTION OF DEED. **I. L. R. 40 Bom. 74**

——— "*Istemrari mokarari*," *meaning of the expression, lexicographical and customary—Tenure, perpetuity of—What covenants and circumstances favour the theory of perpetuity—Meaning of words in a document, whether a question of fact or law—Rights of parties to a contract how governed.* The expression "*istemrari mokarari*" does not *per se* convey, either lexicographically or by way of custom, an estate of inheritance; but an *istemrari mokarari patta*, notwithstanding the absence of words indicative of heritability, such as *ba farzandan, naslan bad naslan* or *al-aulad*, may indicate a perpetual grant, if the other terms of the instrument, the circumstances under which it was made or the subsequent conduct of the parties, show such an intention with *sufficient certainty*. Clauses in a lease which impose a restraint on transfer or cutting down of fruit-bearing or income-yielding trees by the lessee are not consistent with the theory of a perpetual lease. Clauses which throw the cost of improvement on the lessee indicate some measure of continuity, but not necessarily perpetuity. A lease in favour of two persons points to the conclusion that, though some measure of continuity was desired, perpetuity was not intended. A substantial premium for a lease is one of the surest indications of a permanent grant. *Tulshi Pershad Singh* v. *Ramnarain Singh, I. L. R. 12 Calc. 117; L. R. 12 I. A. 205*, analysed and followed. *Tulshinarain Sahu* v. *Baboo Modnarain Singh, (1848) S. D. A. 752*; 10 I. D. (O. S.) 532, *Amecroonnissa Begum* v. *Hetnarain Singh, (1853), S. D. A. 648, The Government of Bengal* v. *Nawab Jafur Hossein, 5 Moo. I. A. 467, Sarobur Singh* v. *Raja Mohendranarain Singh, (1860) S. D. A. 577, Raja Lillanand Singh Bahadur* v. *Thakur Munorunjun Singh, 13 B. L. R. 124; L. R. Sup. Vol. 181, Sheo Pershad Singh* v. *Kally Dass Singh, I. L. R. 5 Calc. 543, Bilasmoni Dasi* v. *Raja Sheo Pershad Singh, I. L. R. 8 Calc. 664; L. R. 9 I. A. 33, Beni Pershad Koeri* v. *Dudhnath Roy, I. L. R. 27 Calc. 156; L. R. 26 I. A. 216, Agin Bindh Upadhya* v. *Mohan Bikram Shah, I. L. R. 30 Calc. 20, Narsingh Dyal Sahu* v. *Ram Narain Singa, I. L. R. 30 Calc. 883*, and *Choudhri Gridhari Singh* v. *Maharaj Ram Narain Singh, 10 C. W. N. cclxxxv*, followed. *Munrunjun Singh* v. *Rajah Lelanund Singh 3 W. R. 84, Tekait Manoraj Sing* v. *Raja Lilanand Sing, 2 B. L. R., A. C., 125n, Rajah Leelanund Singh* v. *Thakoor Monoranjun Singh, 5 W. R. 101, Lakhu Kowar* v. *Roy Hari Krishna Singh, 3 B. L. R., A. C., 226; 12 W. R. 3*, and *Karunakar Mahati* v. *Niladhro Chowdhry, 5 B. L. R. 652; 14 W. R. 107*, overruled. *Watson* v. *Mahesh Narain Roy, 24 W. R. 176*, referred to. The meaning of words in a document is a question of fact, though the effect of words is a question of law. *Chatenay* v. *Brazilian Submarine Telegraph Company, [1891] 1 Q. B. 79*, followed. The rights of parties to a contract are to be judged by that law by which they may justly be presumed to have bound themselves. *Lloyd* v. *Guibert, 6 B. & S. 100; 122 E. R. 1134*, and *Abdul Aziz Khan* v. *Appayasami Naicker, I. L. R. 27 Mad. 131; L. R. 31 I. A. 1*, followed. Where a lease is in favour of two persons and the lease would not terminate till the death of the survivor of the two lessees, no question of limitation can arise before the death of both the lessees. *Quære*: Whether the mode in which registration of a lease is effected is relevant to an enquiry as to the nature of the lease. *Najibulla Mulla* v. *Nusir Mistri, I. L. R. 7 Calc. 196, Jagatdhar Narain Prasad* v. *Brown, I. L. R. 33 Calc. 1133*, and *Indra Bibi* v. *Jain Sardar Ahiri, I. L. R. 25 Calc. 845, Sartaj Kuari* v. *Deoraj Kuari, I. L. R. 10 All. 272, L. R. 15 I. A. 51*, referred to. RAM NARAIN SINGH *v.* CHOTA NAGPUR BANKING ASSOCIATION (1915) . . . **I. L. R. 43 Calc. 332**

LEAVE OF COURT.

See HUNDI, SUIT ON. **I. L. R. 40 Bom. 473**

See PRESIDENCY TOWN INSOLVENCY ACT (III OF 1909), S. 17. **I. L. R. 40 Bom. 235**

LEAVE TO APPEAL TO PRIVY COUNCIL.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 110 . **I. L. R. 40 Bom. 477**

LEGAL INTEREST.

See DECLARATORY DECREE, SUIT FOR. **I. L. R. 43 Calc. 694**

LEGAL NECESSITY.

See HINDU LAW—ALIENATION. **I. L. R. 43 Calc. 417, 574**

LEGAL PRACTITIONER.

See LEGAL PRACTITIONERS ACT (XVIII OF 1879), S. 14.

I. L. R. 38 All. 182

LEGAL PRACTITIONERS ACT (XVIII OF 1879), ss. 13 (*b*) 14.

See UNPROFESSIONAL CONDUCT.

I. L. R. 43 Calc. 685

——— ss. 13, 14—

1. ——— *Specific charge under s. 13 (b), necessary—Taking instruction from unauthorised persons—Conduct improper.* In a reference under the Legal Practitioners Act, the High Court confines itself to the charge framed by the Primary Court. The finding that the pleader was guilty of the fraudulent or grossly improper conduct in the discharge of his professional duty within the meaning of s. 13 (*b*) of the Legal Practitioners Act was disregarded as the pleader was not charged with that. Where a pleader was found to have received instructions from a person about whom he made no enquiries as to his right to instruct him on behalf of certain minors or their mother and also that he filed a written statement which was not prepared by him and that he accepted the vakalatnama at the instance of another party in the suit and that he filed a receipt which on the face of it was not genuine without even examining it, it was held that his conduct was most improper, although no injury resulted from it. The pleader was suspended for nine months. *In the matter of* JUGAL CHANDRA MAZUMDAR (1916) . **20 C. W. N. 1016**

2. ——— *Muktear abusing Court's Officer if liable to disciplinary action—Contempt—Object of punishment—Subordinate Court, if may start enquiry under s. 14 in cases other than under cls. (a) and (b) to s. 13—High Court, if may adopt a report made by subordinate Court in a proceeding wrongly initiated but properly conducted.* S. 14 of the Legal Practitioners Act invests a Subordinate Court with authority to inquire into any case of misconduct alleged against a pleader or Mukhtear practising before it, covered by s. 13 of the Act as amended by Act XI of 1896, and not merely cases covered by cls. (*a*) and (*b*) of s. 13. *In the matter of Southekal Krishna Rao, L. R. 14 I. A. 154*: s. c. *I. L. R. 15 Calc. 152*, explained. *In re Purna Chandra Pal, I. L. R. 27 Calc. 1023*: s. c. *4 C. W. N. 389*, commented on. Whether an enquiry is made by or under the orders of the High Court under s. 13 or is instituted by the Subordinate Court of its own motion the final order can be passed only by the High Court. The law does not require an inquiry ordered under s. 13 to be conducted directly by the High Court. Therefore, even if it were incompetent for a Subordinate Court to initiate an inquiry into certain kinds of charges of misconduct, if such an inquiry has been properly held after notice there is nothing to prevent the High Court from adopting it as one which could be directed under s. 13. The Court, at least when in session, is present in every part

LEGAL PRACTITIONERS ACT (XVIII OF 1879) *—contd.*

——— s. 13—*concld.*

of the place set apart for its own use and for the use of its officers, jurors and witnesses, and disorderly conduct anywhere in such place amounts to a contempt of Court. The power of suspension or removal is distinct from the power to punish for contempt, but a contempt may be of such character as to warrant the exercise of the disciplinary powers of the Court. When the Court takes notice of a misconduct which consists in the obstruction of, or an interference with, one of its officers, the object of the discipline enforced is not so much to vindicate the dignity of the Court or the person of the officer, as to prevent undue interference with the administration of justice. Where a muktear in the course of an altercation with the Court's accountant in the latter's office used abusive language which was heard by the Munsif from his Court: *Held*, that for such conduct the Court could take disciplinary action against the mukhtear. *In the matter of* RASIK LAL NAG (1916) . . . . **20 C. W. N. 1284**

——— s. 14—

1. ——— *Legal practitioner—Prosecution ordered—Certificate not to be cancelled until result of prosecution is known—Practice.* Where a District Judge, having the alternative to take action against a pleader practising in his judgeship under s. 14 of the Legal Practitioners Act, 1879, or to initiate criminal proceedings against him, takes the latter, he ought to wait until the result of the criminal proceedings is known before refusing to renew the pleader's certificate. *In the matter of* A PLEADER (*1916*). . **I. L. R. 38 All. 182**

2. ——— *Gross contempt of a Subordinate Court by a second-grade pleader by unjustly attacking its impartiality in the discharge of its duties—Jurisdiction of Subordinate Courts to take proceedings under s. 14 for all cases coming under s. 13, Cl. (f), not ejusdem generis.* In the course of an enquiry before a District Munsif, a second-grade pleader who appeared for one of the parties to the enquiry swore an affidavit and filed the same in Court requesting that that Court should not proceed with the enquiry. The affidavit contained unjust aspersions, imputations and insinuations, couched in insulting language charging the District Munsif with rancour and prejudice against the pleader and with a desire to injure him both as a pleader and also as a public man. The Munsif thereupon took these proceedings under s. 14 of the Legal Practitioners Act (XVIII of 1879) charging the pleader under s. 13, cl. (*f*) of the Act. with contempt of Court. *Held*, (*i*) that Subordinate Courts have jurisdiction to take proceedings not only under cls. (*a*) and (*b*) of s. 13, but also under all the other clauses of the section; (*ii*) that cl. (*f*) is not confined to misconduct *ejusdem generis* as those referred to in the previous clauses; and (*iii*) that the pleader was guilty of misconduct by his outragous attack upon the Court in the exercise of its functions. Their Lordships

LEGAL PRACTITIONERS ACT (XVIII OF 1879) —*concld.*

———— s. 14—*concld.*

accordingly suspended the pleader from practice for a period of four months. The decision of KNOX J. in *In the matter of the Petition of Mahomed Abdul Hai, I. L. R. 29 All. 61*, and *In the matter of a Pleader, I. L. R., 26 Mad. 448*, followed. THE DISTRICT JUDGE, KISTNA *v.* HANUMANULU (1915).
I. L. R. 39 Mad. 1045

LEGAL REPRESENTATIVE.

See CIVIL PROCEDURE CODE, (ACT V OF 1908), S. 2, CL. (*121*); O. XXII, R. 1.
I. L. R. 39 Mad. 382

———— of the receiver—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XL, R. 4.
I. L. R. 39 Mad. 584

LEGATEE.

———— suit for maintenance against—

See HINDU LAW—MAINTENANCE.
I. L. R. 39 Mad. 396

LEGISLATION.

———— when retrospective—

See ASSESSMENT.
I. L. R. 43 Calc. 978

LEGITIMACY.

See MAHOMEDAN LAW—GIFT.
I. L. R. 38 All. 627

———— acknowledgment of—

See MAHOMEDAN LAW.—ACKNOWLEDGMENT OF SONSHIP.
I. L. R. 40 Bom. 28

LESSEE.

See MADRAS ESTATE LAND ACT.
I. L. R. 39 Mad. 1018

———— dispossession of—

See LESSOR AND LESSEE.
I. L. R. 39 Mad. 1042

LESSOR.

See TENANTS-IN-COMMON.
I. L. R. 39 Mad. 1049

LESSOR AND LESSEE.

1. ———— *Lease for a term—Dispossession of lessee, within term by trespassers—Right of suit of lessor, for actual possession—Lessee joined as defendant—Decree—Declaration of title—If formal possession can be given.* A lessor whose lessee is dispossessed by a stranger can maintain a suit against the stranger during the term of the lease and obtain a decree not only declaring his title to the reversion, but also awarding him "formal" possession of the land as provided by O. XXI, r. 36, Civil Procedure Code. *Bissessuri Dabeea* v. *Baroda Kanta Roy Chowdry, I. L. R. 10 Calc. 1076*, and *Sita Ram* v. *Ram Lal, I. L. R. 18 All. 440*, followed. TIRUVENGADA KONAN *v.* VENKATACHALA KONAN (1915).
I. L. R. 39 Mad. 1042

LESSOR AND LESSEE—*concld.*

2. ———— *Suit for rent—Unliquidated claim for damages which has become barred—Equitable set-off, whether available, if possession disturbed.* In a suit by the lessor for rent, it is not open to the lessee to set up by way of equitable set-off an unliquidated claim for damages which was barred at the date of the suit. English case law reviewed. VYRAVAN CHETTY *v.* SRIMATH DEIVASIKAMANI NATARAJA DESIKAR (1915).
I. L. R. 39 Mad. 939

LETTERS OF ADMINISTRATION.

See PROBATE. **I. L. R. 40 Bom. 666**

See SUCCESSION CERTIFICATE ACT (VII OF 1889), S. 4. **I. L. R. 38 All. 474**

LETTER PATENT (24 & 25 VICT. C. 104).

———— cl. 15—

———— *Appeal under—Order of a single Judge in revision against order to give security to keep the peace—No appeal—"Criminal trial," meaning of.* Proceedings taken for binding over persons to keep the peace under chapter VIII, Criminal Procedure Code, are criminal trials within the meaning of s. 15 of the Letters Patent, and hence there is no appeal from the judgment of a single Judge disposing of a Revision Petition presented against an order of a Magistrate under s. 118 of the Code of Criminal Procedure, In *In the matter of Ramasamy Chetty, I. L. R. 27 Mad. 510*, followed. *Re* Desikachari (1915).
I. L. R. 39 Mad. 539

LETTERS PATENT, 1865.

———— cls. 10, 39—

See APPEAL TO PRIVY COUNCIL.
I. L. R. 39 Mad. 128

———— cl. 12—

See HUNDI, SUIT ON.
I. L. R. 40 Bom. 473

———— cl. 15—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 435, 439 AND 133.
I. L. R. 39 Mad. 537

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 488.
I. L. R. 39 Mad. 472

1. ———— *Appeal from judgment of Judge of High Court affirming that of lower Court and dissented from by his colleague—Appeal Court, if bound by findings on which differing judges agreed—"judgment," meaning of.* Where a Bench of two Judges of the High Court having differed as to the disposal of an appeal, the judgment of the lower Court was confirmed, on a further appeal under cl. 15 of the Letters Patent: *Held*, that the Appeal Court was not precluded from reviewing points on which the two Judges were agreed though due regard would be paid to the concurrent findings of the two Judges and of the trial Court. "Judgment" in cl. 15 of the Letters Patent means "the sentence of law pronounced by the Court"

LETTERS PATENT, 1865—*concld.*

upon the matter contained in the record and not the statement of the grounds thereof. *Nandeeput Mahta* v. *Urguhart, 13 W. R. 209,* commented on. UPENDRA NATH BOSE *v.* BINDESRI PROSAD (1915). **20 C. W. N. 210**

2. ——————— "*Judgment,*" *order of a single Judge rejecting—Provincial Small Cause Courts Act (IX of 1887), s. 25, a revision petition under—Appealability.* The order of a single Judge of the High Court rejecting a petition to send for the records and to revise the judgment of the lower Court exercising Small Cause Court jurisdiction is a "judgment" within the meaning of s. 15 of the Letters Patent and is therefore appealable; it is immaterial whether before such refusal the records were called for or notice issued to the other side. *Chappan* v. *Mioidin Kutti, I. L. R. 22 Mad. 68,* and *Tuljaram Row* v. *Alagappa Chettiar, I. L. R. 35 Mad. 1,* followed. *Venkatarama Ayyar* v. *Madalai Ammal, I. L. R. 23 Mad. 169,* and *Puhukudi Abdu* v. *Puwakka Kunhikutti, I. L. R. 27 Mad. 340,* overruled. In matters of discretion such as this, the Court will not ordinarily interfere on appeal though it has jurisdiction to do so. *Golding* v. *Wharton Salt Works Company, 1 Q. B. D. 374,* followed. SRINIVASA IYENGAR *v* RAMASWAMI CHETTIAR (1915) . . **I. L. R. 39 Mad. 235**

——— **cls. 15, 36, 39—**

See LETTERS PATENT APPEAL.
I. L. R. 43 Calc. 90

——— **cls. 15, 44—**

See APPEAL . **I. L. R. 43 Calc. 857**

——— **appeal under the, if competent—**

See LIMITATION ACT (IX OF 1908), ARTS. 11 AND 13 . **I. L. R. 39 Mad. 1196**

LETTERS PATENT APPEAL.

——————— *True result of cancelling therein of a judgment of several of a single Judge of the High Court—Leave to appeal to Privy Council—Letters Patent, 1865, cls. 15, 36, 39—Civil Procedure Code (Act V of 1908), ss. 110, 115—"Court immediately below."* In an appeal under cl. 15 of the Letters Patent (or Charter) the cancelling of a judgment of reversal passed by a single Judge of the High Court results in an affirmance of the decision of "the Court immediately below." Such a Judge sitting alone is not a Court subordinate to the High Court; and thus no decision of a single Judge can be revised under s. 115 of the new Code. DEBENDRA NATH DAS *v.* BIBUDHENDRA MANSINGH (1915). . . . **I. L. R. 43 Calc. 90**

LETTERS PATENT, PATNA.

——— **cl. 10**—*Point not argued before single Judge if may be urged in appeal.* The conduct of a case before a single Judge of High Court must not be regarded as a preliminary canter in which the parties and their legal advisers are not called upon to exert themselves. Ordinarily a point which had not been taken before a single Judge would not be allowed to be taken in appeal under cl. 10 of the Letters Patent. *Saminatha Ayyar* v. *Venkatasuba Ayyer, I. L. R. 27 Mad. 21,* and *Khub Chand* v. *Harmukh Rai, I. L. R. 34 All. 41,* referred to. *The Tanjore Palace Estate* v *Andi Ranniahs 11 I. C. 339,* dissented from. *Bani Madhab* v. *Matungini, I. L. R. 13 Calc. 104,* and *Bechi* v. *Ashanullah Khan, I. L. R. 12 All. 461,* referred to. DEBI CHARAN LAL *v.* SHEIKH MEHDI HUSSAIN (1916). . . . . **20 C. W. N. 1303**

LICENSE.

See CONTRACT ACT (IX OF 1872), S. 23.
I. L. R. 40 Bom. 64

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 105, 107.
I. L. R. 38 All. 178

——— **for erection of stables—**

See NUISANCE . **I. L. R. 40 Bom. 401**

LIMITATION.

See ASSESSMENT.
I. L. R. 43 Calc. 973

See CRIMINAL PROCEDURE CODE (1908), SCH. II, CLS. 17, 20.
I. L. R. 38 All. 85

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 2 . **I. L. R. 38 All. 204**

See CIVIL PROCEDURE CODE (1908), O. XXXIV, R. 5 . **I. L. R. 38 All. 21**

See CONTRACT . **I. L. R. 39 Mad. 509**

See DECREE. . **I. L. R. 40 Bom. 504**

See DECREE, ASSIGNMENT OF.
I. L. R. 43 Calc. 990

See HINDU LAW—ALIENATION.
I. L. R. 43 Calc. 417

See HINDU LAW—JOINT FAMILY PROPERTY . . **I. L. R. 38 All. 126**

See HINDU LAW—SUCCESSION.
I. L. R. 38 All. 117

See LIMITATION ACTS.

See MADRAS LAND ENCROACHMENT ACT (III OF 1905), SS. 4, 5, 6, 7, 14.
I. L. R. 39 Mad. 727

See MORTGAGE.
I. L. R. 38 All. 97, 540

See PROVINCIAL SMALL CAUSE COURTS ACT (VII OF 1887) S. 25.
I. L. R. 38 All. 690

See REVIVOR . **I. L. R. 43 Calc. 903**

See SALE FOR ARREARS OF REVENUE.
I. L. R. 43 Calc. 779

See SUIT FOR ACCOUNT.
I. L. R. 43 Calc. 248

See WASTE LANDS . **L. R. 43 I. A. 303**

1. ——————— *Court of Wards, competency of, to acknowledge debt—Effect of*

LIMITATION—*contd.*

acknowledgment of pre-existing debt by the Court as regards limitation—Court of Wards Act (Beng. IX of 1879,) s. 18—Limitation Act (IX of 1908), s. 19. The Court of Wards Act, 1879, does not contain any express power authorizing the Court to execute promissory notes. But there can be no doubt on the authorities that the Court has power to give an acknowledgment so as to give a new period of limitation under s. 19 of the Limitation Act. *Beti Maharani* v. *Collector of Etawah, I. L. R. 17 All. 198, Ram Charan Das* v *Gaya Prasad, I. L. R. 30 All. 422,* and *Kondamolalu Linga Reddi* v. *Alluri Sarvarayudu, I. L. R. 34 Mad. 221,* applied. RASHBEHARY LAL MANDAR *v.* ANAND RAM (1915).

I. L. R. 43 Calc. 211

2. ——— *Limitation—Executor—Accrual of right to sue—Testator domiciled abroad—Probate—"Capable of instituting suit"—Devolution of interest—Substitution of plaintiff—Straits Settlements Ordinance No. 6 of 1896, ss. 17, 22—Straits Settlements Ordinance No. 31 of 1907, ss. 133, 196.* Straits Settlements Ordinance No. 6 of 1896(*1*), which deals with the limitation of suits, provides as follows:—s. 17, sub-s. (*1*): "When a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application." S. 22. "When, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall as regards him be deemed to have been instituted when he was so made a party . . . ." *Held,* (i) that the executor of a will capable of probate in the Straits Settlements is a legal representative capable of instituting a suit, within the meaning of s. 17, sub-s. (*1*), from the date of the testator's death and not only from the date when he obtains probate. *Quære* as to an executor who renounces probates: (ii) that, according to the English practice (which is made applicable in the Straits Settlements in the absence of any other provision), the will of a testator domiciled in British India, or elsewhere outside the Straits Settlements, although not proved in the place of the testator's domicil, is capable of probate in the Straits Settlements if (*a*) it is valid according to the law of the testator's place of domicil, and (*b*) if there are assets of the testator in the Straits Settlements; (iii) that s. 22 contemplates cases in which a suit is defective by reason of the right persons not having been made parties, but not cases in which the suit was originally properly constituted but has become defective owing to a devolution of interest; in the latter circumstances a carrying on order should be made under s. 169 of the Civil Procedure Ordinance No. 31 of 1907. MEYAPPA CHETTY *v.* SUPRAMANIAN CHETTY.

L. R. 43 I. A. 113

3. ——— *Limitation Act (XV of 1877), s. 14—Suspension of cause of action.* In this appeal their Lordships of the Judicial Committee affirmed, on the question of limitation, the decision of the High Court in the case of *Lakhan Chandra Sen* v. *Madhusudan Sen,* which is reported in *I. L. R. 35 Calc. 209.* NRITYAMONI DASSI *v.* LAKHAN CHANDRA SEN (1916).

I. L. R. 43 Calc. 660

4. ——— *Valuable Consideration what is—"Transfer," if grant of permanen lease is—Suit to recover possession of property from lessee, if maintainable without making mortgagee of same property, party—Limitation Acts (XV of 1877), s. 10, Sch. II, Art. 134; and (IX of 1908), ss. 10, 30, Sch. I, Art. 134.* In a suit by a *shebait* to recover possession of *debutter* property vested in the *shebait* in trust for the deity, which had been transferred more than 12 years before the institution of the suit by the plaintiff's predecessor in title, who had granted a *putni* lease of the property for consideration of a considerable fixed annual rent, but without receipt of any bonus:—*Held,* that the suit was barred by limitation under Art. 134 of Sch. I of Act IX of 1908. *Abhiram Goswami* v. *Shyma Charan Nundi, I. L. R. 36 Calc. 1003; L. R. 36 I. A. 148, Ishwar Shyam Chand Jiu* v. *Ram Kanai Ghose, I. L. R. 38 Calc. 526; L. R. 38 I. A. 76,* and *Damodar Das* v. *Lakhan Das, I. L. R. 37 Calc. 885; L. R. 37 I. A. 147,* distinguished. *Held,* further, that the grant of the permanent lease in this case was a transfer for valuable consideration. *Currie* v. *Misa, L. R. 10 Exch. 153,* followed. *Held,* also, that no period of limitation was prescribed for a suit of the present nature under the Act of 1877, and therefore s. 30 of the Act of 1908 has no application in this case. Where in this case the plaintiff had granted a valid usufructuary mortgage of the property in suit to a third person for a term which did not expire before the institution of the suit, it is not open to him to determine the lease to the defendants, the benefit of which had been expressly assigned by the plaintiff to the mortgagee. RAMESWAR MALIA *v.* SRI SRI JIU THAKUR (1915) . . .

I. L. R. 43 Calc. 34

5. ——— *Adverse possession—Claim by person to lands notified by Government as reserved forest lands under Madras Forest Act (Madras Act V of 1882)—Onus of proof—Islands formed in bed of sea at mouth of tidal navigable river—Right of the Crown to such Islands—Limitation Act (XV of 1877), Arts. 144 and 149—Right of appeal—to High Court from decision of District Court under Madras Forest Act—Right under general provisions as to appeals in Civil Procedure Code.* In this appeal the question for determination was whether the Secretary of State in Council (appellant) was entitled to incorporate the lands in dispute into a reserved forest under the Madras Forest Act (Madras Act V of 1882), such lands being islands formed in the bed of the sea near the mouth or delta of the river Godāvari, a tidal navigable river, and within 3 miles of the mainland: *Held,* that such islands were the property of the Crown which was not bounded in its dominion of the bed of the sea by the rise or fall of the tide. The Crown is the owner, and the owner in property

LIMITATION—*contd.*

of islands arising in the sea within the territorial limits of the Indian Empire. The onus of establishing title to property by reason of possession for a certain requisite period lies on the person asserting such possession. Objectors to afforestation preferring claims under the Forest Act against the Secretary of State for India are in the same position as persons bringing a suit in an ordinary Court for a declaration of right to which Art. 144 of Sch. II of the Limitation Act, 1877, is applicable, the period of 12 years however being extended to 60 years by Art. 149 ; and the onus of establishing possession for the required period is upon the claimants. *Radha Gobind Roy* v. *Inglish*, *7 C. L. R. 364*, followed ; *Secretary of State for India* v. *Vira Rayan*, *I. L. R. 9 Mad. 175*, distinguished. In this case *held* (reversing the decision of the High Court), that on the evidence the claimants had not proved adverse possession for a period sufficient to establish a right against the Crown. Though an appeal from the District Judge to the High Court is not provided for in the Madras Forest Act in a claim to lands which have been notified as reserved forest lands under the Act such an appeal will lie under the provisions of the Civil Procedure Code. Where in such proceedings the District Court is reached, that Court is appealed to as one of the ordinary Courts of the country with regard to whose procedure, orders and decrees the rules of the Civil Procedure Code are applicable. In such a case the ordinary incidents of litigation could only be excluded by specific provisions to that effect. *Kamaraju* v. *Secretary of State for India*, *I. L. R. 11 Mad. 309*, approved. *Rangoon Botatoung Company* v. *Collector of Rangoon I. L. R. 40 Calc. 21 ; L. R. 39 I. A. 197*, distinguished. SECRETARY OF STATE FOR INDIA *v.* CHELLIKANI RAMA RAO (1916).

I. L. R. 39 Mad. 617

6. ——— *Suit for contribution between joint debtors—Exoneration of defendant by the decree on the ground of limitation—Plaintiff paying the whole decree—Cause of action for contribution only after payment.* The plaintiff and the defendant having each borrowed a certain sum of money from a stranger executed a joint promissory note in 1903 for the total amount in favour of the stranger. After receiving some amounts from both the promisors, the promisee sued them both in 1911 but the decree was for the balance due, only against the present plaintiff, the present defendant being exonerated on his plea of limitation. After paying the decree amount in March 1912 the plaintiff immediately sued the defendant for contribution : *Held*, (i) that the right to sue for contribution arose only on plaintiff's payment, (ii) that the defendant was liable to contribute in spite of the fact that he was exonerated under the previous decree on the ground of limitation, and (iii) that the suit was not barred by limitation, the cause of action having arisen only on the date of plaintiff's payment. *Gardner* v. *Brookes*, *2 Ir. R. 6*, and *Woolmersharsen* v. *Guillick*, [1893] *2 Ch. 514*, followed. The liability to contribute is based on

LIMITATION—*concld.*

an equity arising out of the co-debtor's payment and it has no reference to the original liability to the common promisee. The *obtier dictum* in page 311, *Subramania Aiyar* v. *Gopala Aiyar*, *I. L. R. 33 Mad. 308*, not followed. ABRAHAM SERVAI *v.* RAPHIAL MUTHIRIAN (1914).

I. L. R. 39 Mad. 288

LIMITATION ACT (XV OF 1877).

——— **s. 10, Sch. II, Art. 134—**

See LIMITATION . **I. L. R. 43 Calc. 13**

——— **s. 14—**

See LIMITATION . **I. L. R. 43 Calc. 660**

——— **ss. 19, 20—**

See EXECUTION OF DECREE.
I. L. R. 43 Calc. 207

——— **Sch. II, Art. 126—**

See HINDU LAW—JOINT FAMILY PROPERTY . . **I. L. R. 38 All. 126**

——— **Sch. II, Arts. 178, 179—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 88, 89.
I. L. R. 40 Bom. 321

——— **Sch. II, Arts. 179, 180—**

See REVIVOR . **I. L. R. 43 Calc. 903**

LIMITATION ACT (IX OF 1908).

——— **inapplicability of, to insolvency proceedings—**

See INSOLVENCY, PROCEEDINGS IN.
I. L. R. 39 Mad. 74

——— **ss. 3, 7 ; Sch. 1, Art. 142—**

——— *Minor—Representative—Death of the minor after majority but pending disability—Right of personal representative to sue—Limitation.* Where a minor acquired a cause of action to sue for possession of property and died within three years after attaining majority, his personal representative can, although twelve years have expired since the cause of action, accrued, institute a suit on the same cause of action at any time within the three years' period which had already commenced in the life-time of deceased. In such a suit the deceased must be included in the term " plaintiff " for the purpose of Art. 142, for, according to s. 3 of the Limitation Act, " plaintiff " includes any person from or through whom the plaintiff derives his right to sue. ARJUN RAMJI *v.* RAMABAI (1916) . **I. L. R. 40 Bom. 564**

——— **ss. 5, 12**—*Sufficient cause—Interference by High Court in second appeal—The time requisite for obtaining a copy of the decree, what is.* It is now settled b a long string of authorities that where a Court after considering all the circumstances of the case has come to the conclusion that sufficient cause has or has not been established within the meaning of s. 5 of the Limitation Act for not filing an appeal within time, the High Court will not interfere in second appeal. Where a judgment was

LIMITATION ACT (IX OF 1908)—*contd.*

——— s. 5—*concld.*

passed on 27th September 1913 and the decree was prepared and signed on the same day and the annual vacation began on the following day and the Court reopened on 1st November and the appellants applied for a copy of the judgment on 3rd November and for a copy of the decree on 13th November and both copies were ready and were delivered on 21st November and the appeal was filed on 28th November in the lower Appellate Court: *Held*, that the whole of the time which elapsed from the delivery of the judgment to the reopening of the Court on November 1st, 1913, was part of the time requisite for obtaining copies of the judgment and decree, and that this must be so whether the appellant applied for copies on the day on which the Court reopened or on some later date. The words of s. 12, Limitation Act, do not appear to lay down any rule that the time requisite for obtaining a copy must be continuous. DEBI CHARAN LAL *v.* SHEIKH MEHDI HUSSAIN (1916).

20 C. W. N. 1303

——— ss. 5, 12, 29—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 46, CL. (*3*).

I. L. R. 39 Mad. 593

——— ss. 5, 14; Sch. I, Art. 178—

See CIVIL PROCEDURE CODE (1908), SCH. II, CLS. 17 AND 20.

I. L. R. 38 All. 85

——— ss. 10, 30; Sch. I, Art. 134—

See LIMITATION . **I. L. R. 43 Calc. 34**

——— s. 12—

See DECREE AGAINST A MAJOR AS MINOR

I. L. R. 39 Mad. 1031

——— s. 12—*High Court judgment—Application for review—Limitation if runs from before the signing of decree.* In computing the period of limitation for an application for review of a judgment of the High Court, the party applying for review is entitled to have excluded, under s. 12 of the Limitation Act, the time requisite for taking a copy of the decree, and the period of limitation cannot in such a case commence to run until, at all events, the day the decree was signed by the Judges. GANGADHAR KARMAKAR *v.* SEKHAR BASISNI DASYA (1916) . **20 C. W. N. 967**

——— s. 12; Sch. I, Art. 179—*Limitation—Application for leave to appeal to His Majesty in Council—Exclusion of time requisite for obtaining a copy of the decree. Held*, that s. 12 of the Indian Limitation Act, 1908, applies to applications for leave to appeal to His Majesty in Council. The appellant is therefore entitled to exclude the day upon which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree from the period of limitation prescribed. RAM SARUP *v.* JASWANT RAI (1915).

I. L. R. 38 All. 82

LIMITATION ACT (IX OF 1908)—*contd.*

——— s. 14—

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 62, 120 . **I. L. R. 39 Mad. 62**

——— *Withdrawal of suit—Fresh suit, filing of, whether saved by.* S. 14 of the (Indian) Limitation Act (IX of 1908) applies only to cases where a Court itself decides that it is unable to entertain a suit for want of jurisdiction or other cause of a like nature and has no application to a case where the plaintiff himself withdraws his suit on discovery of some technical defect which would involve a failure. *Varajlal* v. *Shomeshwar*, *I. L. R. 29 Bom. 219*, and *Upendra Nath Nag Chowdhury* v. *Suryakanta Ray Chowdhury*, *20 I. C. 205*, followed. ARUNACHELLAM CHETTIAR v. LAKSHMANA AYYAR (1915).

I. L. R. 39 Mad. 936

——— s. 19—

See LIMITATION. **I. L. R. 43 Calc. 211**

——— s. 19; Sch. I, Art. 148—

See MORTGAGE . **I. L. R. 38 All. 540**

——— s. 22—*Substitution of beneficiaries for administratrix after time—New plaintiff.* Where the widow of a deceased person G was appointed administratrix of his estate until G's eldest son should attain majority, and a suit was instituted by the widow after the eldest son of G had attained majority under a *bonâ fide* belief that she was competent to sue as administratrix, but on discovering her mistake, she prayed that the three sons of G for whose benefit she had been appointed administratrix, be substituted as plaintiffs and the substitution was made at a time when the suit if instituted would have been time-barred: *Held*, that this was not the addition of a new plaintiff within the meaning of s. 22 of the Limitation Act. *Dhurm Das* v. *Shama Sundari*, *3 Moo. I. A. 229*, *Hari Saran* v. *Bhubaneswari*, *I. L. R. 16 Calc. 40*, and *Peary Mohan* v. *Narendra Nath*, *9 C. W. N. 421*, referred to. NISTARINI DASYA *v* SARAT CHANDRA MAZUMDAR (1915) . . . **20 C. W. N. 49**

——— Sch. I, Arts. 11, 13—*Civil Procedure Code (Act V of 1908), O. XXI, r. 63—Claim petition filed on the original side of the High Court—Claim allowed—Appeal under the Letters Patent, if competent—Order confirming original order—Suit under O. XXI, r. 63, after one year from date of original order, but within one year from order on appeal—Starting point of limitation.* A claim petition was filed by the second defendant objecting to the attachment of certain properties as belonging to the first defendant in execution of a decree passed by the High Court on its original side. The petition was allowed in favour of the claimant by an order passed by a single Judge of the High Court on its original side. The plaintiff, who was the decree-holder, filed an appeal against the order to the High Court under the Letters Patent, and the original order was confirmed on appeal. The plaintiff brought a suit under O. XXI, r. 63 of the Code of Civil Procedure (Act V of 1908), to establish his right to attach the property, more than

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Arts. 11, 13—*concld.*

one year from the date of the original order but within one year from the date of the order passed on appeal: *Held*, that Art. 11 and not Art. 13 of the Limitation Act (IX of 1908) applied to the case but that the suit was not barred, as the starting point of limitation under Art. 11 was the date of the order passed on appeal. The word "order" in Art. 11 of the Limitation Act should be construed as meaning the only subsisting order in the case, which is the appellate order (when there has been an appeal), in accordance with the recognised principles of jurisprudence. An appeal lies under the Letters Patent against an order of a single Judge of the High Court on its Original Side, passed on a claim petition filed therein. VENUGOPAL MUDALI *v.* VENKATASUBBIAH CHETTY (1916).
I. L. R. 39 Mad. 1196

Sch. I, Art. 12—

See DECREE AGAINST A MAJOR AS MINOR.
I. L. R. 39 Mad. 1031

Sch. I, Arts. 31, 49, 115—

See SPECIFIC MOVEABLE PROPERTY.
I. L. R. 39 Mad. 1

Sch. I, Arts. 32, 143—*Bengal Tenancy Act (VIII of 1885), s. 155—Suit to eject tenant under—Limitation.* Art. 32 and not 143 of the first schedule to the Limitation Act governed a suit by a landlord brought under s. 155 of the Bengal Tenancy Act to eject a tenant who had allowed a portion of his holding to be encroached upon by a stranger and had exchanged another plot of land of the tenancy with the stranger in contravention of the terms of his *kabuliyat*. *Sharoop Dass Mondal* v. *Joggassur Roy Chowdhry, I. L. R. 26 Calc. 564*; s. c. *3 C. W. N. 464*, relied on. TAHER MONDAL *v.* TARAFDI GHARAMI (1915).
20 C. W. N. 661

Sch. I, Arts. 49, 115, 145—*Gold deposited with goldsmith to be made into ornaments—Suit to recover—Limitation.* Where the allegation was that nearly 11 years ago the plaintiff had made over a *tola* of gold to defendant to be made into ornaments, but no time was fixed and the latter put him off from time to time until being pressed by plaintiff on 24th March 1914, he promised to make and deliver the ornaments within 15 days, but failed to do so: *Held*, that Art. 145 of Sch. I to the Limitation Act applied to a suit for recovery of the gold deposited. Art. 145 applies even when the property is not recoverable in specie and does not cease to be applicable merely because the defendant refuses to return the property. Such refusal does not bring into operation Art. 48 or 49. Even if Art. 49 applied limitation would begin running from 8th April 1914 before which there was no refusal. If Art. 115 applied limitation would run from the same date, when the contract was broken. GANGAHARI CHAKRAVARTI *v.* NABIN CHANDRA BANIKYA (1915) . **20 C. W. N. 232**

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Arts. 59, 60—

Loan or deposit—Money left with a trader, not being a banker, if loan or deposit—Deposit, in Art. 60, meaning of. Under art. 60 of the Limitation Act (IX of 1908), money left in the hands of a trader who is not a banker will be a deposit in circumstances such as would make it money of a customer where the depositee is a banker. Art. 60 and not Art. 59 of the Limitation Act (IX of 1908) applies to a suit to recover money so deposited, even though it is payable on demand. The word "deposit" in Art. 60 is used in a non-legal sense. *Official Assignee of Madras* v. *Smith, I. L. R. 32 Mad. 68, Perundevitayar Ammal* v. *Nammalvar Chetti, I. L. R. 18 Mad. 390*, and *Ishur Chunder Bhaduri* v. *Jibun Kumari Bibi, I. L. R. 16 Calc. 25*, followed. *Dharam Das* v. *Ganga Devi, I. L. R. 29 All. 773*, and *Ichha Dhanji* v. *Natha, I. L. R. 13 Bom. 338*, dissented from. *Sinclair* v. *Brougham (Birbeck Bank Case)*, *[1914] A. C. 398*, referred to. SUBRAHMANIAN CHETTIAR *v.* KADIRESAN CHETTIAR (1916).
I. L. R. 39 Mad. 1081

Sch. I, Art. 62—

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 11 . **I. L. R. 40 Bom. 614**

Suit for money taken in execution of a decree—Compensation—Suit for money had and received. In execution of a decree certain rents due to the judgment-debtor from his tenants were attached. Prior to the passing of this decree the judgment-debtor had sold the property to a third party. The decree-holder got the court *amin* to realize the rents due from the tenants and they were deposited in Court and ultimately paid over to the decree-holder. The purchaser brought the present suit against the decree-holder for the recovery of the money within three years of the payment to him. *Held*, that the suit was money had and received within the meaning of art. 62 of sch. I to the Indian Limitation Act. *Jagjivan Javherdas* v. *Gulam Jilani Chaudhuri*, *I. L. R. 8 Bom. 17*, dissented from. NIADAR SINGH *v.* GANGA DEI (1916).
I. L. R. 38 All. 676

Sch. I, Arts. 62, 120—

1. *Suit for money on the ground of wrongful rateable distribution, governed by Art. 62 and not by Art. 120 of the Limitation Act—S. 14 of the Limitation Act—Time taken to file and to prosecute a revision petition against order of wrongful distribution, not to be deducted under s. 14.* A suit for money under s. 73, cl. (2), Civil Procedure Code, on the ground that the plaintiff and not the defendant was entitled to receive the same in proceedings in execution of a decree for rateable distribution is governed by Art. 62 and not by Art. 120 of the Limitation Act (IX of 1908), the cause of action arising on the date of wrongful payment to the defendant. In computing the period of limitation for the filing of such a suit the plaintiff is not entitled to deduct under s. 14 of the Limit-

LIMITATION ACT (IX OF 1908)—*contd.*

——— Sch. I, Arts. 62, 120—*concld.*

ation Act the period of time taken by him to file a revision petition in the High Court or the time during which the plaintiff was prosecuting the revision petition against the order of wrongful distribution. *Vishnu Bhikaji Phadke* v. *Achut Jogannath Ghate, I. L. R. 15 Bom. 438,* followed. *Ramaswamy Chetty* v. *Harikrishna Chettyar,* 21 *Mad. L. J. 705,* not followed. BAIZNATH LALA *v.* RAMADOSS (1914) . **I. L. R. 39 Mad. 62**

2. ——— *Civil Procedure Code (Act V of 1908), O. XXII, rr. 11 and 9—Withdrawal of surplus sale-proceeds belonging to the plaintiff by defendant—Suit instituted more than three years from date of withdrawal.* Where an application for substitution was made more than six months after the appellant's death before the Registrar and the respondents did not put in any objection before the Registrar to the hearing of the appeal, the application for substitution was treated as an application for the restoration of the appeal after abatement. The plaintiff, a purchaser at auction sale of a revenue-paying estate, made default in the payment of Government revenue and the estate was sold and the surplus sale proceeds were withdrawn by the defendants, the original proprietors whose names still remained in the register, and a suit was instituted by the plaintiff, for the recovery of the money so withdrawn, more than three years after the date of withdrawal: *Held,* that Art. 62 of the Limitation Act applied and the suit was barred by limitation. *Muhammad Wahib* v. *Muhammad Ameer, I. L. R. 32 Calc. 527,* and *Lachmi Narain Singh,* v. *Dhanukdhari Prasad Singh, 17 Ind. Cas. 351,* referred to. Money paid to one party with the implied intention that it should finally reach the hands of the party to whom it actually belongs, is money, within the meaning of Art. 62, paid to that party for the use of the actual person in whom the right to receive it vests. HARIHAR MISSER *v.* SYED MOHAMMED (1916) . . . . **20 C. W. N. 983**

——— Sch. I, Art. 80—

——— *Promissory note payable on demand—Agreement fixing time for payment—Suit, by payee—Limitation, from the expiry of the period fixed.* Art. 80 of the Limitation Act is the article applicable to a suit by the payee on a promissory note payable on demand but accompanied by an agreement fixing a period for payment and time begins to run from the expiry of the period fixed in the accompanying agreement. *Simon* v. *Hakim Mahomed Sheriff, I. L. R. 19 Mad. 368,* and *Somasundaram Chettiar* v. *Narasimha Chariar, I. L. R. 29 Mad. 212* overruled. ANNAMALAI CHETTY *v.* VELAYUDA NADAR (1915).

I. L. R. 39 Mad. 129

——— Sch. I, Art. 89—

——— *Agent, liability of, to principal, suit on—Limitation—Agency, termination of—Indian Contract Act (IX of 1872).* Money is moveable property within the meaning of Art. 89 of the Limitation Act. *Ashgar Ali Khan* v. *Khurshed Ali Khan, I. L. R. 24 All. 27,* followed. Art. 89 applies to suits by a principal against an agent for moveable property received by the latter and not accounted for and time begins to run when the account is, during the continuance of the agency, demanded and refused, or, when no such demand is made when the agency terminates. An agency is determined when the agent ceases to represent the principal though his liability in respect of acts done by him as agent may continue. *Babu Ram* v. *Ram Dayal, I. L. R. 12 All. 541,* and *Fink* v. *Buldeo Das, I. L. R. 26 Calc. 715,* dissented from. *Jogesh Chandra Ghose,* v. *Benode Lal Roy, 14 C. W. N. 122,* not followed. VENKATACHALAM *v.* NARAYANAN (1914) . **I. L. R. 39 Mad. 376**

LIMITATION ACT (IX OF 1908)—*contd.*

——— Sch. I, Art. 89—*concld.*

——— Sch. I, Arts. 89, 115, 132—

See PRINCIPAL AND AGENT.

I. L. R. 43 Calc. 248

——— Sch. I, Art. 91—*Alienation by Hindu widow—Suit by reversioner to recover possession of property alienated—Alienation found to be sham—Limitation.* A Hindu widow having alienated a property of her husband, the reversioners sued more than three years after the date of alienation to recover possession of the property. It was found that the alienation was merely a sham. The lower Courts held that Art. 91 of the Second Schedule of the Limitation Act 1908 did not apply and decreed the suit. The defendant having appealed. *Held,* that Art. 91 of the Second Schedule of the Limitation Act had no application, for the apparent obstacle presented by the mortgage proved unreal and ineffectual. MANCHHARAM *v.* PANABHAI LALLUBHAI (1915) . . **I. L. R. 40 Bom. 51**

——— Sch. I, Art. 91 or 124—

See TRUSTEES OF A TEMPLE.

I. L. R. 39 Mad. 456

——— Sch. I, Arts. 92, 93—

——— *Suit to declare the forgery of an instrument—Attempt—Lease—Attempt to record a lease under the Record of Rights Act (Bom. Act IV of 1903) is not an attempt to enforce.* The defendant applied to the Mamlatdar to record, under the Record of Rights Act, 1903, a lease under which he claimed to be entitled to a rent of 400 cocoanuts from the plaintiff. The application was made on the 4th August 1908, but the plaintiff having complained that the document was a forgery the Mamlatdar declined to record it. The defendant then applied to the Collector who on the 11th August 1909 ordered that the lease should be recorded. On the strength of the record, the defendant sued in the Mamlatdar's Court for the enforcement of the terms of the lease and recovered in April and July 1912 cocoanuts of the value of upwards of Rs. 40. Within three years of the recovery of these cocoanuts the plaintiff brought the suit to recover back the value of the cocoanuts on the footing of the alleged lease being

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Arts. 92, 93—*concld*

a forgery. The defendant contended that the suit was barred under Art. 93 of the Limitation Act, on the ground that it was filed more than three years after the 4th August 1908, the date of an attempt to enforce it against the plaintiff. *Held*, that the suit was not barred under Art. 93 of the Limitation Act, 1908, as the first real 'attempt to enforce' the lease took place when the defendant attempted to recover the rent under the lease and that attempt was made within three years of the institution of the suit. The attempt to get the lease recorded under the Record of Rights Act, could not be put higher than an unsuccessful attempt to have a document registered in a case in which registration was necessary (Art. 92); and that such an attempt was not an attempt to enforce the lease. ACHUT RAYAPA *v.* GOPAL SUBBAYA (1915).

I. L. R. 40 Bom. 22

Sch. I, Arts. 110, 115, 120—

See JOINT PROPERTY.

I. L. R. 39 Mad. 54

Sch. I, Art. 116—*Bond executed by defendant alone and accepted by plaintiff and subsequenily registered, suit upon—Limitation.* Art. 116 of the Limitation Act applies to a suit brought by the plaintiff to enforce a debt due upon a bond executed by the defendant alone and accepted by the plaintiff and subsequently registered. CHELLAPHROO CHOWDHURI *v.* BANGA BEHARI SEN (1915).

20 C. W. N. 408

Sch. I, Arts. 120, 142—"*Dispossession*" *and* "*discontinuance of possession*," *meaning of—Suit to determine rights of parties to order under s. 146, Criminal Procedure Code, period of limitation for—Suit, if lies against Magistrate—Magistrate a stakeholder—Declaratory suit against rival claimant—continuing wrong.* The defendants attempted to interfere with the plaintiff's possession of the disputed property and a breach of the peace becoming imminent proceedings under s. 145, Criminal Procedure Code, were instituted and resulted in an order of attachment under s. 146, Criminal Procedure Code. The plaintiff sued for declaration of his title and for recovery of possession. *Held*, that though deprived of possession, the plaintiff was not dispossessed or had discontinued possession within the meaning of Art. 142 of the Limitation Act. Meaning of "dispossession" and "discontinuance of possession" explained. That as there was no cause of action against the Magistrate, the suit could be brought only against the defendants. *Goswami* v. *Giridhari I. L. R. 20 All. 120*, dissented from. *Raja of Venkatagiri* v. *Isakapali, I. L. R 26 Mad. 410*, followed on this point. *Khagendra Narain* v. *Matangini, I. L. R. 17 Calc. 814, 819* and *Rama Swamy* v. *Muthu Swamy, I. L. R. 30 Mad. 12*, referred to. That plaintiff having proved his title, the suit must be treated as a suit for declaration of title under s. 42 of the Specific Relief Act. That it was a case of continuing wrong independent of contract, and consequently, under s. 23 of the Limitation Act, a

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Arts. 120, 142—*concld.*

fresh period of limitation under Art. 120 began to run at every moment of the time the wrong continued. "Continuing wrong" defined. *Raja of Venkatagiri* v. *Isakapali, I. L. R. 26 Mad. 410*, dissented from. *Mahabharat* v. *Abdul Hamid, I. C. L. J. 73, Binda* v. *Kaunsila, I. L. R. 13 All. 126, Ananda v. Veyyanna, I. L. R. 15 Mad. 492*, and *Jugal Kishore* v. *Lakshman Das, I. L. R. 23 Bom. 659*, referred to. BROJENDRA KISHORE ROY CHOUDHURY *v.* SAROJINI RAY (1915).

20 C. W. N. 481

Sch. I, Arts. 121, 142, 144—

See SALE FOR ARREARS OF REVENUE.

I. L. R. 43 Calc. 779

Sch. I, Art. 130—

See SARANJAM. **I. L. R. 40 Bom. 606**

Sch. I, Arts. 132, 75—*Mortgage bond—Interest payable annually—Principal payable on a future date—Principal and interest payable immediately on default—Option to mortgagee to enforce payment—Suit after twelve years from default, if barred—Gift by a Hindu widow of a mortgage bond due to her husband—gift, if valid and to what extent—Suit by widow, competency of transferee to continue—Decree, nature of.* Suits for money due on hypothecation bonds, though containing stipulations for payment in instalments, are governed by Art. 132 and not by Art. 75 of the Limitation Act (IX of 1908), and there is no warrant for importing into the former the words of the latter article. A hypothecatee is not *bound* to take advantage of a clause in his bond, which, in case of default in payments of interest, enables him (*a*) to demand the principal before its due date and (*b*) also claim a higher rate of interest from the date of default. Hence a suit restricted to a claim to recover the principal and interest at the original rate, brought within twelve years from the date originally fixed for payment of the principal though beyond twelve years from the date of first default in respect of interest, is not barred by limitation. *Nettakaruppa Goundan* v. *Kumarasami Goundan, I. L. R. 22 Mad. 20, Astley* v. *Earl of Essex, 18 Eq. 290*, and *Governors of Magdalen Hospital* v. *Knotts, 5 Ch. D. 175*, followed. *Perumal Ayyan* v. *Alagirisami Bhagavathar, I. L. R. 20 Mad. 245*, explained. A gift by a Hindu widow of a mortgage bond executed to her in discharge of a debt due to her husband, is valid to the extent of the interest that had accrued due at the date of the gift, and the transferee is competent after her death to prefer a second appeal in a suit filed by her on the bond and obtain a decree for recovery of interest only due thereon. NARNA *v.* AMMANI AMMA (1916).

I. L. R. 39 Mad. 981

Sch. I, Arts. 134, 144—

See ADVERSE POSSESSION.

I. L. R. 39 Mad. 879

Suit for redemption by co-mortgagor—Property already redeemed, remortgaged and finally sold to second mort-

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Arts. 134, 144—*concld.*

gagee—Limitation—Transfer of Property Act (IV of 1882), s. 95. In 1860 the father of a family of four sons mortgaged some of the family property. In 1877, after the death of the father, one of the sons again mortgaged the property and with the money borrowed on the second mortgage paid off the first mortgage. The second mortgagee or his son remained in possession of the property as mortgagee until 1898, when the second mortgagor sold it to the son of the second mortgagee. In 1912, a grandson of the original mortgagor sued for redemption of the mortgage of 1860. *Held*, that the suit was barred by limitation under Art. 144 of the first schedule to the Indian Limitation Act, 1908, whatever might have been the position of the members of the family (which was not clear) as regards jointness or separation. Art. 134 does not apply to a person who being interested in part of a mortgage redeems the whole, such person being merely a charge-holder and not a mortgagee. *Ashfaq Ahmad* v. *Wasir Ali, I. L. R. 14 All. 1*, distinguished. JAI KISHAN JOSHI *v.* BUDHANAND JOSHI (1915) . . **I. L. R. 38 All. 138**

Sch. I, Art. 135—

See MORTGAGE . **I. L. R. 38 All. 97**

Sch. I, Arts. 140, 141—

Suit by a reversioner—Mortgage—Redemption—Widow, disappearance of—Presumption of death—Onus of proof—Indian Evidence Act (I of 1872), s. 108. One S died leaving him surviving his widowed daughter-in-law R. In 1860 R passed a mortgage bond in favour of the 1st defendant's father. In 1865 R disappeared and was not heard of since 1870. In 1911 the plaintiff, as the reversioner of S, sued to recover possession of the property alienated by R. The defendants pleaded limitation. The first Court decided in plaintiff's favour on the ground that under s. 108 of the Indian Evidence Act the Court must presume that R died at the time of the suit and therefore the claim was in time. The lower Appellate Court reversed the decree and dismissed the suit holding that the presumption of R's death at the time of the suit could not be drawn and that the *onus probandi* which lay heavily on the plaintiff to show when R died was not discharged. The plaintiff having appealed: *Held*, that it lay on the plaintiff to show affirmatively that he had brought his suit within twelve years from the actual death of R. *Nepean* v. *Doe d. Knight, 2 M. & W. 894*, followed. Art. 141 of the Limitation Act is merely an extension of Art. 140, with special reference to persons succeeding to an estate as reversioners upon the cessation of the peculiar estate of a Hindu widow. But the plaintiff's case under each Article rests upon the same principle. The doctrine of non-adverse possession does not obtain in regard to such suits and the plaintiff suing in ejectment must prove whether it be that he sues as remainderman in the English sense or as a reversioner in the Hindu sense, that he sues within twelve years of the estate falling into possession, and that onus is in no way removed by any presumption which can be drawn according to the terms of s. 108 of the Evidence Act, 1872. JAYAWANT JIVANRAO *v.* RAMCHANDRA NARAYAN (1915).

I. L. R. 40 Bom. 239

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Arts. 140, 141—*concld.*

Sch. I, Art. 141—

See HINDU LAW—SUCCESSION.

I. L. R. 38 All. 117

Sch. I, Arts. 165, 181—*Civil Procedure Code (1908), s. 47—Execution of decree—Limitation—Application by judgment-debtor to be restored to possession of immoveable property taken by the decree-holder in excess of that decreed. Held*, that the application of a judgment-debtor for restoration of immovable property seized by the decree-holder in excess of what has been decreed, is one under s. 47 of the Code of Civil Procedure and is governed by Art. 181 of Schedule I to the Indian Limitation Act. *Ratnam Ayyar* v. *Krishna Doss Vital Doss, I. L. R. 21 Mad. 494, Har Din Singh* v. *Lochman Singh, I. L. R. 25 All. 343*, dissented from. ABDUL KARIM *v.* ISLAMUNNISSA BIBI (1916) . . . **I. L. R. 38 All. 339**

Sch. I, Art. 181—

See CIVIL PROCEDURE CODE (1908), O. XXXIV, R. 5. **I. L. R. 38 All. 21**

Sch. I, Arts. 181, 182, 183—

See MORTGAGE DECREE.

I. L. R. 39 Mad. 544

Sch. I, Art. 182—

Application for execution of decree to Court which passed the decree—Application made after transfer of decree to another Court for execution—"Proper Court," meaning of—Civil Procedure Code (Act XIV of 1889), ss. 223 and 224—Civil Procedure Code (Act V of 1908), ss. 38, 39 and 41. In this appeal their Lordships of the Judicial Committee held (affirming the decision of the High Court) that an application for execution of a decree not having been made to the "proper Court" within the meaning of art. 182 of sch. I of the Limitation Act, 1908, was insufficient to prevent limitation from running, and that the execution of the decree was consequently barred. *Maharajah of Bobbili* v. *Narasaraju Peda Baliara Simhhulu, I. L. R. 37 Mad. 231*, upheld. MAHARAJAH OF BOBBILI v. NARASARAJU BAHADUR (1916) . . . **I. L. R. 39 Mad. 640**

Sch. I, Art. 182—

1. *Interpretation, principle of—Execution application—Art. 182, cl. (6)—Notice, issue of, whether, gives a fresh starting point.* Art. 182 of the Limitation Act should receive a fair and liberal but not too technical a construction, so as to enable the decree-holder to obtain the fruits of his decree. The issue of notice referred to in cl. (6) of Art. 182 of the Act need not be in respect of an application made in accordance with law. The words "in accordance

LIMITATION ACT (IX OF 1908)—*contd.*

——— **Sch. I, Art. 182**—*concld.*

with law" found in cl. (5) should not be introduced into cl. (6) when the Legislature has not thought fit to do so. *Jamna Dut* v. *Bishnath Singh*, *6 All. L. J. 944*, and *Deo Narain Singh* v. *Sri Bhagwat Naik*, *10 I. C. 411*, followed. A decision especially on procedure cannot be treated as *res judicata* when that procedure itself is changed by the statute law. VARADARAJA MUDALI *v.* MURUGESAM PILLAI (1915).

I. L. R. 39 Mad. 923

2. ——— *Execution opposed by judgment-debtor alleging payment and asking for certification thereof—Plea successful in first Court, but reversed on appeal—Second appeal by judgment-debtor—Limitation, if suspended during pendency of second appeal.* When a decree-holder is obstructed by violence or fraud and litigation is necessary to get rid of such obstruction, the execution is suspended during such litigation. But the mere pendency of an appeal from a decision which has removed all obstacles from the decree-holder's way cannot give him a right to defer execution until the disposal of such appeal. *Ashrafuddin Ahmed* v. *Bepin Behari Mullick*, *I. L. R. 30 Calc. 407*, *413*, and *Madhab Mani Dasi* v. *Lambert*, *I. L. R. 37 Calc. 796* : *s. c. 15 C. W. N. 337* ; *12 C. L. J. 328*, relied on. KARTICK CHANDRA MONDAL *v.* NILMANI MONDAL (1916) . . . **20 C. W. N. 686**

——— **Sch. I, Art. 182, cl.** (2)—*Suit for ejectment—Decree against some defendants on consent and against others on contest—Appeal by contesting defendants—Dismissal of appeal—Execution of decree, application for, within three years of dismissal of appeal but more than three years after the first Court's decree, if barred as against consenting defendants.* A suit for ejectment brought against two sets of defendants, A and B, was decreed on 17th September 1903 against set A upon consent and against set B upon contest, the result being embodied in one decree which did not define the respective shares of the two sets of defendants. An appeal preferred by set B alone in which they did not make set A parties was not disposed of until 8th May 1908. On 7th May 1910 application was made for execution of the decree against both sets of defendants: *Held*, that the application was not time-barred as against set A, even though set A did not and could not appeal against the decree of 17th September 1903, inasmuch as the appeal of set B was of necessity against the entire decree—there being a chance or risk of the Appellate Court modifying the decree even as against set A. That on appeal by the contesting defendants the whole matter was reopened and the decree-holders were entitled to the benefit of Art. 182, col. 3, cl. (2) of Sch. I of the Limitation Act. *Batuk Nath* v. *Munni Dei*, *I. L. R. 36 All. 350* : *s. c. 18 C. W. N. 740*, and *Ashfak Hossein* v. *Gouri Sahai*, *L. R. 38 I. A. 37* : *s. c. 15 C. W. N. 370* and *Law* v. *Benarashi Proshad*, *19 C. W. N. 287*, referred to. *Quære:* Whether time runs against the decree-holder

LIMITATION ACT (IX OF 1908)—*concld.*

——— **Sch. I, Art. 182, cl.** (2)—*concld.*

from the date of the final decree in the appeal irrespective of the question whether the appeal did or did not imperil the decree whereof execution was ultimately sought. LOKENATH SINGH *v.* GUJU SINGH (1915) . . **20 C. W. N. 178**

——— **Sch. I, Art. 182** (5)—*Application for execution—Limitation—Step in aid of execution—Application by decree-holder certifying portion of payment with a prayer to strike off execution on satisfaction.* An application by the decree-holder certifying payment of a portion of the decretal amount out of Court is a step in aid of execution of the decree within the meaning of Art. 182 (5) of the Limitation Act, provided the payment asserted has actually been made. The fact that there is in the application a prayer that the execution case might be struck off after satisfaction does not take it out of the operation of the above rule. Where an application for execution filed within time which had been returned for amendment of certain formal defects was re-filed after the period of limitation had expired and after the time allowed by the Court for the purpose, with an application explaining the delay and the petition was accepted: *Held*, that the Court had in fact in exercise of its discretion enlarged the time under s. 148, Civil Procedure Code, though there was no express order to that effect. GOPAL PROSHAD BHAGAT *v.* RAJENDRA LAL PANJA (1915) . . **20 C. W. N. 615**

——— **Sch. I, Art. 182** (7)—

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 2 . **I. L. R. 38 All. 204**

——— **Sch. I, Arts. 182, 183**—

See REVIVOR . **I. L. R. 43 Calc. 903**

——— **Sch. I, Art. 183**—*Application to enforce Privy Council order—Revivor, meaning of.* On 22nd January 1915 an application for execution of an Order of Her late Majesty in Council, dated the 28th November 1899 was made to a Subordinate Judge to whom the execution proceedings were transferred: *Held*, that the application was governed by Art. 183 of the 1st Schedule of the Limitation Act, 1908, according to which an application to enforce an Order of the Sovereign in Council must be made within 12 years from the date on which a present right to enforce the order accrued to some person capable of releasing the right, provided, *inter alia*, that where the Order has been revived, 12 years shall be computed from the date of such revivor. Where on an application for execution notice is issued under s. 216 of the Code of Civil Procedure, 1877, or s. 248 of the Code of Civil Procedure, 1882, and the Court has decided that the decree is still capable of execution and makes an order for execution, there has been a revivor within the meaning of the article. Where an Order in Council is transmitted to a subordinate Court for execution without any notice being given to the judgment debtors, it would not be a revivor of the Order. TRIBIKRAM DEO NARAYAN SINGH *v.* BADRI MISSER (1916) . **20 C. W. N. 1051**

LINGAYET PANCH-KALAS MARRIAGE.

See VATANDAR JOSHI.
I. L. R. 40 Bom. 112

LIQUIDATION.

See COMPANIES ACT (VI OF 1882), SS. 58, 147 . . I. L. R. 40 Bom. 134

LIQUIDATOR.

———— ———— *Registered company—Property of the company, vesting of—Official Assignee—Distribution of proceeds in Court, when governed by Civil Procedure Code (Act V of 1908)—Release—Companies Act (VII of 1913), ss. 2 (3), 3 (3), 171, 215, 232.* The Liquidator of a registered company differs in this respect from the Official Assignee in that the property of the company does not vest in him. The distribution of the proceeds which had come into Court before an application was made (to the High Court) to pass an order in favour of the liquidator, must be governed by the provisions of the Code of Civil Procedure. AMRITA LAL KUNDU *v.* ANUKUL CHANDRA DAS (1915).
I. L. R. 43 Calc. 586

LOAN OR DEPOSIT.

See LIMITATION ACT (IX OF 1908), ARTS. 59, 60. I. L. R. 39 Mad. 1081

LOCAL INSPECTION.

———— by Judge—

See RIGHT OF SUIT.
I. L. R. 39 Mad. 501

LOCUS PŒNITENTIÆ.

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R. 43 Calc. 1128

LOWER APPELLATE COURT.

———— power of—

See REMAND. I. L. R. 43 Calc. 148

LUNACY.

See HINDU LAW—SUCCESSION.
I. L. R. 38 All. 117

LUNACY ACT (IV OF 1912).

———— s. 56—*Guardian of lunatic obtaining District Judge's permission to take out compensation money in deposit with Land-Acquisition Judge—Latter if may refuse to pay.* Where the natural guardian of a lunatic, in whose name a sum of money representing his share of compensation money paid by the Land Acquisition Collector was in deposit in the Court of the Land Acquisition Judge, obtained an order from the District Judge under s. 56 of Act IV of 1912 for payment to him of a portion thereof for the maintenance of the unatic, the Land Acquisition Judge had no jurisdiction to refuse the guardian's application for withdrawing the money. SATYENDRA NATH DEY *v.* THE SECRETARY OF STATE FOR INDIA (1916).
20 C. W. N. 975

LURKING HOUSE TRESPASS.

See PENAL CODE ACT (XLV OF 1860), S. 456. . . I. L. R. 38 All. 517

M

MADRAS ACTS.

———— 1865—VII.

See MADRAS WATER-CESS ACT.

———— 1865—VIII.

See MADRAS RENT RECOVERY ACT.

———— 1873—III.

See MADRAS CIVIL COURTS ACT.

———— 1882—V.

See MADRAS FOREST ACT.

———— 1882—XXI.

See MADRAS FOREST ACT.

———— 1884—V.

See MADRAS LOCAL BOARDS ACT.

———— 1886—I.

See ABKARI ACT.

———— 1888—III.

See MADRAS CITY POLICE ACT.

———— 1889—I.

See MADRAS VILLAGE COURTS ACT.

———— 1891—I.

See MADRAS GENERAL CLAUSES ACT.

———— 1894—II.

See MADRAS PROPRIETARY ESTATES: VILLAGE SERVICE ACT.

———— 1895—III.

See MADRAS HEREDITARY VILLAGE: OFFICES ACT.

———— 1903—I.

See MADRAS PLANTERS' LABOUR ACT.

———— 1904—III.

See MADRAS CITY MUNICIPAL ACT.

———— 1905—II.

See MADRAS PORT TRUST ACT.

———— 1905—III.

See MADRAS LAND ENCROACHMENT ACT.

———— 1908—I.

See MADRAS ESTATES LAND ACT.

MADRAS CITY MUNICIPAL ACT (III OF 1904).

———— bye-law 169—*Exposing for sale unwholesome drink (ærated waters)—'Food' in bye-law not covering "drink."* The word "food" in bye-law 169 framed under the Madras City Municipal Act (III of 1904), which prohibits the exposing or keeping for sale any article intended for human food which is unwholesome or unfit for human consumption, does not include drinks such as ærated waters. THE CROWN PROSECUTOR *v.* GANAPATHI IYER (1914) I. L. R. 39 Mad. 362

MADRAS CITY POLICE ACT (III OF 1888).

——— s. 75—*Place of public resort, meaning of—Madras harbour, if a place of public resort—Disorderly behaviour in harbour premises, if an offence under s. 75—Public place, meaning of—Right of public to go, if necessary—Madras Port Trust Act (II of 1905), bye-law 22, meaning of.* The Madras harbour is a place of public resort within the terms of s. 75 of the Madras City Police Act. Though the bye-laws passed under the Port Trust Act provide for the prosecution as trespassers of persons who enter the harbour premises without having business there or with the ships lying in the harbour, yet the bye-laws were not intended to exclude respectable members of the public who have been freely allowed to enter the harbour premises. A legal right of access by the public is not necessary to constitute a public place. A public place is one where the public go, no matter whether they have a right to go or not. *The Queen* v. *Wellard, 14 Q. B. D. 63,* followed. *Kiston* v. *Ashe, [1899] 1. Q. B. 245,* referred to. THE CROWN PROSECUTOR *v.* GOVINDARAJULU (1915)

I. L. R. 39 Mad. 886

MADRAS CIVIL COURTS ACT (III OF 1873).

——— ss. 12, 13— *Court-Fees Act (VII of 1870), s. 7 (ix)—Suits Valuation Act (VII of 1887)—Suits to redeem—Suit in a Subordinate Court—Valuation for purposes of jurisdiction and court-fees, same—Court-fees, rightly payable only on principal debt secured below Rs. 5,000—Erroneous order of Subordinate Court to pay court-fees on total amount payable on redemption above Rs. 5,000—Appeal—No jurisdiction to the High Court but to the District Court.* In a suit for redemption of a mortgage instituted in the Subordinate Judge's Court, the amount of the principal of the debt was Rs. 3,899 and odd; the plaintiffs paid court fees on that amount; but the Subordinate Judge erroneously ordered the plaintiffs to pay court fees on the total amount payable on redemption, *viz.*, Rs. 7,218 and odd, and the plaintiffs paid the deficient court-fees. The Subordinate Judge passed a decree in the suit in favour of the plaintiffs. The defendants preferred an appeal to the High Court. The respondents objected that the appeal did not lie to the High Court but to the District Court: *Held,* that the amount of the principal debt must be taken as determining the jurisdiction under the Civil Courts Act, and consequently that the suit lay in the Subordinate Judge's Court and that the appeal lay to the District Court and not to the High Court. The authority of the Full Bench decision in *Zamorin of Calicut* v. *Narayana, I. L. R. 5 Mad. 284,* is unaffected by the Suits Valuation Act (VII of 1887). The order of the Subordinate Judge, erroneously levying court-fees on the total amount payable on redemption, cannot deprive the District Court of jurisdiction to hear the appeal and confer it on the High Court. *Vasudeva* v. *Madhava, I. L. R. 16 Mad. 326,* followed. *Ijjatulla Bhuyan* v. *Chandra Mohan Bannerjee, I. L. R. 34 Calc. 954,* distinguished. JALLALDEEN MARAKAYAR *v.* VIJAYASWAMI (1915)

I. L. R. 39 Mad. 447

MADRAS ESTATES LAND ACT (I OF 1908).

——— *Lessee whose term has expired, whether a landholder under the Act—No power to distrain holding after expiry of lease.* The provisions of the Madras Estates Land Act (I of 1908) do not empower a person who was a lessee of an estate to take proceedings after the expiry of his lease to sell the tenant's holding for arrears of rent due for a fasli covered by the period of his lease. *Forbes* v. *Maharaj Bahadur Singh, I. L. R. 41 Calc. 926,* referred to. *Per* SPENCER *J.*—His only remedy is to sue the tenant on his contract for rent. *Per* SESHAGIR AYYAR *J.*—(i) A person to whom arrears are due is a landholder, notwithstanding the fact that his estate has terminated. (ii) The law does not give him a first charge on the holding or the crops thereon. (iii) He can distrain the moveable property or the trees in the holding of the defaulter. (iv) He is not entitled to attach the holding. SUNDARAM AYYAR *v.* KULATHU AYYAR (1915) **I. L. R. 39 Mad. 1018**

——— s. 3. cl. (*d*) and s. 6—*Whole inam village—Minor inams therein—Sarva inam of the temple, whole village described as—Landholder, meaning of, in s. 6 of the Act.* S. 3, sub-s. (2), clause (*d*), of the Estates Land Act excludes from the definition of "estate," minor inams, *i.e.*, particular extents of lands in a particular village as contrasted with the grant of the whole village by its boundaries. A whole inam village though containing such minor inams is an estate within the meaning of clause (*d*) of the above section. Where a village is described as sarva or rent-free agraharam of a deity it means that the whole village has been granted to the deity as inam. The term "landholder" in s. 6 of the Act need not be a beneficial owner of the "estate" and includes a receiver appointed to manage the estate. NARAYANASWAMI NAYUDU *v.* SUBRAMANYAM (1915)

I. L. R. 39 Mad. 683

——— ss. 3, 8, 185—*Private land, conversion of ryoti into—Proof—Proviso to s. 185, nature of. Per* WALLIS *C. J.*—S. 8 of the Estates Land Act does not impose respectively an absolute prohibition of the conversion of ryoti into private land not to be found in the definition or in the section specially dealing with evidence as to what is private land. Such a conversion should be proved by every clear and satisfactory evidence. The acquisition of kudivaram right in certain lands by the landlord and his letting them out as kambattam lands on terms negativing occupancy right with a view to present the assertion of such right is not sufficient to convert them into private lands within the meaning of the definition. *Per* SESHAGIRI AYYAR, *J.*—Land originally *seri* cannot become the private land of the landholder except in the one instance mentioned in the proviso to s. 185 of the Act. The proviso is not in the nature of an exception but enacts a rule of substantive law. *Mullins* v. *Treasurer of Surrey, 5 Q. B. D. 173,* and *Mahu Prasad Singh* v. *Ramani Mohan Singh, 27 Mad. L. J. 459,* followed. ZAMINDAR OF CHELLAPALLI *v.* SOMAYA (1914)

I. L. R. 39 Mad. 341

MADRAS ESTATES LAND ACT (I OF 1908) —*contd.*

——— **s. 6, sub-s.** (*6*) **and s. 8**—*Government lands under ryotwari tenure, purchased by zamindar —Release of revenue on such lands—Zamindari lands, acquired by Government under Land Acquisition Act (I of 1894)—Compensation—Substitution of ryotwari lands as zamindari lands—Suit to eject—Jurisdiction of Civil Courts—Acquisition by landholder of occupancy right—Acquisition by tenant of landholder's right, difference between.* Where a zamindar who had purchased some ryotwari lands from a Government ryot and obtained a release of revenue due on such lands in lieu of compensation payable to him for some other lands taken up by the Government under the Land Acquisition Act (I of 1894), brought a suit in 1911 in the District Court to recover such lands from a tenant who was in possession thereof since 1901, and the defendant contended that he had acquired occupancy right thereto and that the Civil Courts had no jurisdiction to entertain the suit: *Held* (i) that assuming that the suit lands were substituted as part of the zamindari, the plaintiff, who was a Government ryot of such lands prior to the substitution had occupancy right therein and did not lose such right by becoming interested in them as a landholder, under the explanation to sub-s. (*6*) of s. 6 of the Madras Estates Land Act; (ii) that the provision of s. 8 (*1*) of the Act refer to the acquisition of occupancy right by landholders and not to the acquisition of landholders' right by ryots; and (iii) that in any event the general provisions of s. 8 (*1*) cannot affect the special provisions of the explanation to sub-s. (*6*) of s. 6 of the Act. ZAMINDAR OF SANIVARAPPET *v.* ZAMINDAR OF SOUTH VALLUR (1915) **I. L. R. 39 Mad. 944**

——— **ss. 11 and 151**—*Suit for injunction by landholder against tenant—Agricultural holding—Erection of building on part of the holding—Part rendered unfit for agricultural purposes—Holding as a whole not rendered unfit, effect of—Right of landholder to reliefs under s. 151—Bengal Tenancy Act (VIII of 1885), s. 23.* S. 151 of the Madras Estates Land Act gives the landholder a right to sue for any of the reliefs mentioned in clauses 1 and 2 thereof only when the holding *as a whole* was rendered substantially unfit for agricultural purposes by the acts of the ryot committed on the whole or any part of the holding. *Hari Mohun Misser* v. *Surendra Narayan Singh, I. L. R. 34 Calc. 718*, followed. RAMA *v.* ARUNACHALAM (1915) . . . **I. L. R. 39 Mad. 673**

——— **s. 13, cl.** (*3*)—*Improvements at tenants' sole expense—Payment of higher rent therefor for sixty years—Presumption of a binding contract to pay at a higher rate under the Rent Recovery Act—Madras Estates Land Act (I of 1908), s. 28—Sadalwar and Mathiri Kasuvu, not illegal cesses within s. 143 of the Act. Held,* by NAPIER and KUMARASWAMI SASTRIYAR *JJ.* (SADASIVA AYYAR *J.* dissenting), that—(*i*) s. 13, clause (*3*) (Madras Estates Land Act) does not enable a tenant to claim exemption from liability to pay a higher rate of rent for crops raised with the help of improvements made at the tenants' sole expense where the improvements had been effected before the Act came into force and where there had been a binding *contract* entered into between the landlord and the tenant before the passing of the Act for the payment of such enhanced rent, (*ii*) the section applies only to contracts and improvements made after the Madras Estates Land Act came into force, (*iii*) the right to levy increased assessments in consequence of improvements effected before the Act being a vested right in the landholder, the section cannot be construed so as to operate retrospectively and to defeat the same especially when there is no indication in the section that it is to operate retrospectively and (*iv*) the rule embodied in s. 28 of the Act applies to the increased assessment and makes it binding between the parties. *Per* SADASIVA AYYAR and NAPIER *JJ.*—Where the higher rate was regularly paid for sixty years even in respect of the improvements effected at the tenants' sole expense, the Courts could presume a lawful origin for a *contract* to pay like that under the Rent Recovery Act (Madras Act VIII of 1865). *Per* SADASIVA AYYAR *J.*—*Sadalwar* (charge for stationery) and *Mathiri Kasuvu* (straw rent) which were being customarily paid along with the rent for a long number of years form part of the rent and are not additional illegal cesses within s. 143 of the Madras Estates Land Act. VENKATA PERUMAL RAJA *v.* RAMUDU (1914) **I. L. R. 39 Mad. 84**

MADRAS ESTATES LAND ACT (I OF 1908) —*contd.*

——— **s. 13**—*contd.*

——— **s. 28**—

See MADRAS ESTATES LAND ACT (I OF 1908), S. 13, CL. (*3*). **I. L. R. 39 Mad. 84**

——— **ss. 164—167**—*Officer, preparing record of rights under—Criminal Procedure Code (Act V of 1898), s. 476, not a Court within the meaning of.* A revenue Officer preparing a record of rights under ss. 164—167 of the Madras Estates Land Act, is only discharging an executive function of Government and is not a Court within the meaning of s. 476 of the Code of Criminal Procedure. *Re* HANUMANTHA RAO (1915) **I. L. R. 39 Mad. 414**

——— **s. 189 and cl.** (*12*) **of Part A of Schedule**—*Suit to recover lands under the Act for non-payment of rent, non-maintainability of, in Civil Courts.* S. 189 and clause (*12*) of Part A of schedule to the Madras Estates Land Act (I of 1908) preclude a Civil Court from taking cognizance of a suit by a ryot, to recover possession of a holding sold under the Madras Estates Land Act, for non-payment of rent, on the ground that the landholder had no right to sell the holding. Clause (*12*) is not confined to a suit to question an intended sale of the holding *Gouse Moideen Saib* v. *Muthialu Chettiar, 26 Mad L. J. 36*, distinguished. RAMANATHAN *v.* RAMASWAMI (1914) . . **I. L. R. 39 Mad. 6**

MADRAS ESTATES LAND ACT (I OF 1908)—*contd.*

———— **ss. 189. 213, 134, 91 and 77**—*Ryotwari landowner—Illegal distraint—Suit for damages—Jurisdiction—Revenue Court—Madras Rent Recovery Act (VIII of 1865), ss. 49 and 78.* A suit by the tenant of a ryotwari landowner or of any sub-tenant of such for damages for illegal distraint of moveable property, growing crops of the produce of land or trees in the defaulter's holding is solely cognizable by the Revenue Court. *Per* WALLIS, *C. J.*—Sub-ss. (*2*) and (*3*) of s. 213 of the Madras Estates Land Act are in the nature of provisos and it would not be legitimate to cut down the operative portion of s. 189 to which these provisos do not in terms apply merely because otherwise, the provisos would be " meaningless and even senseless." *West Derby Union* v. *Metropolitan Life Assurance Society*, [*1897*] *A. C. 647*, referred to. Sub-ss. (*2*) and (*3*) which were drafted in place of ss. 49 and 78 of the Rent Recovery Act were probably retained by inadvertance after the jurisdiction of the Civil Court had been taken away by s. 189 in its present form. *Obiter:* Suits under s. 91 of the Madras Estates Land Act are exclusively within the jurisdiction of the Civil Court. *Per* SADASIVA AYYAR and SRINIVASA AYYANGAR, *JJ.*—Clause (*2*) of s. 213 saves the Civil Court's jurisdiction only where the suit is not brought for the relief of pecuniary damages for proceedings taken under colour of the Act, that is, where it is brought for other remedies such as injunction, declaration, possession, etc. *Per* SADASIVA AYYAR, *J.*—The proviso forming clause (*3*) of s. 213 takes away the jurisdiction of the Civil Court even in respect of cases claiming other redress than pecuniary damages if the redress of damages had been already claimed by the plaintiff in a suit filed before the Collector under clause (*1*) of s. 213. *Quære:* Whether the remedy by a suit in the Collector's Court to set aside a distress under s. 95 can be availed of by a Government ryot's tenant whose moveables have been distrained under s. 77 and whether assuming that he could do so, the jurisdiction is an exclusive one in the Revenue Court. NARAYANASWAMY *v.* VENKATARAMANA (1915) . . . **I. L. R. 39 Mad. 239**

———— **ss. 210, 211 and Art. 8 of Part A of Schedule**—*Limitation Act (XV of 1877), s. 7—Suits for arrears of rent—Minority as a ground of exemption—Statutes of Limitation, when retrospective—Principles to be applied—Madras General Clauses Act (I of 1891), s. 6, cl. (e) and s. 8, cl. (d).*—A 'landholder' under the Madras Estates Land Act, who became a major on 5th October 1906 brought suits for recovering arrears of rent due for fasli 1315, after the Estates Land Act came into force, but within three years of his attaining majority. On the date the suits were brought more than three years had elapsed after the rents had become due. The lower Courts dismissed the suit as barred by the limitation of three years prescribed by ss. 210 and 211 and Art. 8 of Part A of the schedule to the Estates Land Act: *Held* by WALLIS, *C.J.* and KUMARASWAMI SASTRIYAR *J.*, agreeing with SADASIVA AYYAR, *J.* [SESHAGIRI AYYAR, *J.*, dissenting]: (*a*) that notwithstanding s. 211, which prohibited the application of s. 7 of the Limitation Act (XV of 1877) to suits under the Estates Land Act, the plaintiff was entitled to the exemption and extension given by s. 7 of the Limitation Act, and (*b*) that the suits were therefore within time. Section 211 of the Estates Land Act should not be construed retrospectively so as to destroy or practically destroy rights of action existing on the date that Act came into force. Retrospective operations of statutes considered. *Ramkrishna Chetty* v. *Subbaraya Ayyar, I. L. R. 38 Mad. 191* and *Gopeshwar Pal* v. *Jiban Chandra, I. L. R. 41 Calc.* 1125, followed. *Per* SESHAGIRI AYYAR *J.*—As s. 211 of the Estates Land Act expressly prohibited the application of s. 7 of the Limitation Act, the suit was barred by the three years' rule of limitation prescribed by the Estates Land Act. It is the rule of limitation that is in force at a time the suit is instituted that governs the action and not the one under which the rights accrued. *Soni Ram* v. *Kanya Lal, I. L. R. 35 All. 227*, followed. RAJAH OF PITTAPUR *v.* VENKATASUBBA ROW (1915) **I. L. R. 39 Mad. 645**

MADRAS ESTATES LAND ACT (I OF 1908)—*concld.*

———— **s. 210**—*concld.*

MADRAS FOREST ACT (XXI OF 1882).

———— **ss. 6, 10, 16 and 17**—*Notification under s.16—Notice under s. 6, a condition precedent—Irregularity due to absence of notice, not cured by knowledge under s. 17—Grant of personal inam of lands including poramboke, meaning of.* A Forest Settlement Officer who is constituted a Court for the decision of claims to lands which it is proposed to include in a reserved forest, has, in the absence of notice required by s. 6 of the Act, no jurisdiction to make any decision affecting the right to those lands. *Nusservanjee Pistonjee* v. *Meer Mynoodeen Khan Wullud Meer Sudroodeen Khan Bahadur, 6 Moo. I. A. 134*, and *Saunby* v. *London (Ont) Water Commissioners*, [*1906*] *A. C. 110*, followed. Poramboke in the phrase, grant of " lands besides poramboke," means poramboke or unassessed waste. *Secretary of State for India* v. *Raghunathathatha Chariar, 24 Mad. L. J. 31*, followed. *Narayanasami Naidu* v. *Secretary of State for India, 21 Mad. L. J. 36*, distinguished. BALKRISHNA RAO *v.* THE SECRETARY OF STATE FOR INDIA (1915) **I. L. R. 39 Mad. 494**

MADRAS LAND ENCROACHMENT ACT (III OF 1905).

See MADRAS WATER CESS ACT (VII OF 1865). . . **I. L. R. 39 Mad. 67**

———— **ss. 5, 6, 7 and 14**—*Notice under s. 7—Levy of penal assessment—Suit for declaration—Cause of action—Limitation.* A notice under s. 7 of the Madras Land Encroachment Act (III of 1905) was issued to the plaintiff and penal assessment was thereafter levied from him. More than six months after such levy the plaintiff brought

MADRAS LAND ENCROACHMENT ACT (III OF 1905)—*concld.*

——— **s. 5**—*concld.*

this suit for a declaration of his title to the land, injunction and for the refund of the assessment levied. *Held*, that the notice under s. 7 of the Madras Land Encroachment Act calling on the person in occupation to show cause why he should not be proceeded against under s. 5 or 6 of the Act does not give rise to a cause of action; but that the suit was barred, having been filed more than six months after the levy of assessment. *Narayana Pillai* v. *Secretary of State, 22 Mad. L. J. 162*, approved. *Bhaskaradu* v. *Subbarayudu, I. L. R. 38 Mad. 674*, considered. THE SECRETARY OF STATE FOR INDIA *v.* ASSAN (1915) **I. L. R. 39 Mad. 727**

MADRAS LOCAL BOARDS ACT (V OF 1884).

——— **s. 73**—*Mortgagee with possession, whether intermediate holder—His right to recover rent.* A mortgagee with possession is an intermediate tenure-holder within the meaning of s. 73 of the Local Boards Act (V of 1884), and is entitled to recover rent by summary process. The tenant's liability to pay him is not abrogated by a contract to which he was not a party. JAGANNAIKULU *v.* MANAGER OF NANDIGAM ESTATE (1914) **I. L. R. 39 Mad. 269**

MADRAS PLANTERS' LABOUR ACT (I OF 1903).

——— **ss. 24 and 35**—*Breach of contract by maistry or labourer—Prosecution of maistry—Successive prosecutions and convictions, if permissible under the Act—Directions by the Magistrate to complete performance—Successive directions, if permitted by the Act.* Under s. 35 of the Madras Planters' Labour Act (I of 1903), the Magistrate has power to issue successive directions to a maistry labourer to complete the performance of his contract. *Re Panga Maistry, I. L. R. 36 Mad. 497*, dissented from. Successive prosecutions can be instituted and convictions obtained against a maistry in respect of successive defaults made by him under s. 24, clauses (*a*), (*b*) and (*c*) of the Act. *Unwin* v. *Clarke, L. R. 1 Q. B. 417*, and *Cutler* v. *Turner, 9 Q. B. 502*, followed. WHITTON *v.* MAMMAD MAISTRY (1915) **I. L. R. 39 Mad. 889**

MADRAS PORT TRUST ACT (II OF 1905).

——— **bye-law 22**—

See MADRAS CITY POLICE ACT (III OF 1888), s. 75. **I. L. R. 39 Mad. 886**

MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT (II OF 1894).

——— **ss. 5 and 10, cl.** (*2*)—*Service inam—Emoluments, partition of, whether prohibited—Alienation, validity of—Subsequent suit for ejectment—Transfer of Property Act (IV of 1882), s. 43—Ancestral property—Property inherited by maternal grandsons—Interests, nature of.* The enfranchisement of a service *inam* under s. 10, cl. (*2*) of the Madras Proprietary Estates Village Service Act (II of 1894) does not destroy the rights of any member of a joint family who has a hereditary interest in it. The alienation of a service *inam* is void and though it is subsequently enfranchised, the alienee cannot invoke the aid of s. 43 of the Transfer of Property Act in his favour. *Ramaswami Naick* v. *Ramaswami Chetty, I. L. R. 30 Mad. 255*, *Narahari Sahu* v. *Siva Narithan Naidu (1913) Mad. W. N. 415*, and *Bochu Ramayya* v. *Pharasatchi (1913) Mad. W. N. 999*, referred to. Property which descends on daughter's sons from their maternal grandfather is ancestral property in which the grandsons take an interest by birth according to the Mitakshara law. Cases reviewed. RAMAYYA *v.* JAGANNADHAN (1915) **I. L. R. 39 Mad. 930**

MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT (II OF 1894)—*concld.*

——— **s. 5**—*concld.*

the Madras Proprietary Estates Village Service Act (II of 1894) does not destroy the rights of any member of a joint family who has a hereditary interest in it. The alienation of a service *inam* is void and though it is subsequently enfranchised, the alienee cannot invoke the aid of s. 43 of the Transfer of Property Act in his favour. *Ramaswami Naick* v. *Ramaswami Chetty, I. L. R. 30 Mad. 255*, *Narahari Sahu* v. *Siva Narithan Naidu (1913) Mad. W. N. 415*, and *Bochu Ramayya* v. *Pharasatchi (1913) Mad. W. N. 999*, referred to. Property which descends on daughter's sons from their maternal grandfather is ancestral property in which the grandsons take an interest by birth according to the Mitakshara law. Cases reviewed. RAMAYYA *v.* JAGANNADHAN (1915) **I. L. R. 39 Mad. 930**

MADRAS RENT RECOVERY ACT (VIII OF 1865)—

See MADRAS ESTATES LAND ACT (I OF 1998), s. 13, CL. (*3*). **I. L. R. 39 Mad. 84**

——— **ss. 49, 78—**

See MADRAS ESTATES LAND ACT (I OF 1908), 13, CL. (*3*) **I. L. R. 39 Mad. 239**

MADRAS VILLAGE COURTS ACT (I OF 1889).

——— **s. 24**—*Order of Deputy Collector debarring one from appearing as vakil for parties in village Courts, ultra vires—Specific Relief Act (I of 1877), s. 42—Suits for declaration of invalidity of order, maintainability of.* Under s. 24 of the Madras Village Courts Act (I of 1889) *any person* holding a vakalatnama from a party may appear and plead in a village court, and there is no provision in the Act for debarring any one from this privelege. The power of removing, suspending and dismissing village munsifs conferred on Divisional officers does not include the power of debarring a person from acting as a vakil for a party in village courts. A suit for a declaration that an order debarring one from acting as vakil for another in village courts is void is maintainable though it may not be covered by s. 42 of the Specific Relief Act (I of 1877). RAMACHANDRA RAO *v.* SECRETARY OF STATE FOR INDIA (1915) **I. L. R. 39 Mad. 808**

MADRAS WATER-CESS ACT (VII OF 1865).

——— *Water-cess—Zamindari lands—Excess area, whether liable to pay water-cess—Madras Land Encroachment Act (III of 1905), effect of.* Where a right to take water is proved, even though no express agreement on behalf of Government not to levy any charge is proved, an engagement under Act VII of 1865 will be implied and no cess can be levied. *Per* SANKARAN NAIR, J.—Act III of 1905 did not take away any rights that existed at the time the Act

MADRAS WATER-CESS ACT (VII OF 1865)—*concld.*

was passed and the Government are not by reason of that Act coupled with Act VII of 1865 entitled to impose any cess upon those landholders who were before the Act not liable to pay cess for their using the water. *Kandukuri Mahalakshmamma Garu* v. *The Secretary of State for India, I. L. R. 34 Mad. 295*, and *Venkataratnammah* v. *Secretary of State, I. L. R. 37 Mad. 366*, followed. SRI RAJAH SIMHADRI RAJU *v.* SECRETARY OF STATE FOR INDIA (1914) **I. L. R. 39 Mad. 67**

MAGISTRATE.

———— an executive officer—

See PRESS ACT (I OF 1910), S. 3 (*1*), PROVISO. **I. L. R. 39 Mad. 1164**

———— duty of—

See SURETY **I. L. R. 43 Calc. 1024**

———— order of forfeiture passed by—

See RIGHT OF SUIT **I. L. R. 40 Bom. 200**

MAHAD.

See HINDU LAW—MITAKSHARA. **I. L. R. 40 Bom. 621**

MAHANT.

———— right of succession as—

See HINDU LAW—ENDOWMENT. **I. L. R. 43 Calc. 707**

MAHOMEDAN LAW.

	COL.
ACKNOWLEDGMENT OF SONSHIP . .	265
CUSTOM	266
DOWER	266
ENDOWMENT	267
GIFT	268
WAKF	270

See GUARDIANS AND WARDS ACT (VIII OF 1890) **I. L. R. 39 Mad. 608**

See MORTGAGE . **I. L. R. 38 All. 92**

See PRE-EMPTION. **I. L. R. 38 All. 201**

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 123, 129 **I. L. R. 38 All. 212**

MAHOMEDAN LAW—ACKNOWLEDGMENT OF SONSHIP.

———— *Acknowledgment of legitimate sonship—Inference of acknowledgment.* A Mahomedan cannot legally acknowledge as his son a person who is shown to be the son of another man. The acknowledgment must be not merely of sonship but of legitimate sonship; but the fact that the acknowledgment was of legitimacy as well as of sonship may be inferred from circumstances justifying that inference. USMANMIYA *v.* VALLI MAHOMED (1915) . **I. L. R. 40 Bom. 28**

MAHOMEDAN LAW—CUSTOM.

———— *Lubbais of Coimbatore district—Right of succession—Exclusion of females—Custom—Retention of rule of Hindu Law—Proof of Custom, standard of—Family Custom, proof of—Abandonment of Custom.* Among the Lubbais of the Coimbatore district, who are Hindu converts to Mahomedanism, a custom prevails under which they retain the rule of Hindu Law which excludes females from the right of succession. *Mirabivi* v. *Vellayanna, I. L. R. 8 Mad. 464*, and *Kunhambi* v. *Kalanthar, 27 Mad. L. J. 156*, referred to. It is open to them to abandon the custom and follow the ordinary rule of Mahomedan Law. *Rajkeshan Singh* v. *Ramjoy Surma Moozoomdar, I. L. R. I Calc. 186*, referred to. *Per* SRINIVASA AYYANGAR *J.*—Custom in its legal sense means a rule exceptional to the general rule of law. In India, in many cases, it is impossible to say that any particular usage which is pleaded is in derogation of a general law, consequently the inquiry in many cases is as to what is the law and not what is the usage at variance with law. Nature of custom and standard of proof thereof required in England and in India compared. *Hirbai* v. *Gorbai, 12 Bom. H. C. R. 294, Rarichan* v. *Perachi, I. L. R. 15 Mad. 281, Kunhi Raman* v. *Kunhi Parvathi, (1910) Mad. W. N. 642*, and *Fanindra Deb* v. *Rajeswar Dass, L. R. 12 I.A. 72*, referred to. SHAIK *v.* MUHAMMAD (1915) **I. L. R. 39 Mad. 664**

MAHOMEDAN LAW—DOWER.

1. ———— *Right to retain property in lieu of dower—Heritable right.* The right which a Mahomedan widow, having a claim to dower, acquires on obtaining possession of her husband's property, is a heritable right. It is a substantial right and if she is wrongfully dispossessed she can maintain a suit to recover possession. MAJIDMIAN BANUMIAN *v.* BIBISAHEB JAN (1915) . . . . **I. L. R. 40 Bom. 34**

2. ———— *Interest on unpaid dower—Claim for, by widow allowed to take possession of her husband's estate to satisfy her dower-debt—Liability of widow in possession to account for profits of estate—Recognition by Mahomedan law of equitable principles in such a case.* Where a Mahomedan widow was allowed to take possession of her husband's estate in order to satisfy her dower debt with the income of it, and there was no agreement, express or implied, that she should not be entitled to claim any sum in excess of her actual dower: *Held*, that, on equitable considerations she was entitled to some reasonable compensation, not only for the labour and responsibility imposed on her for the proper preservation and management of the estate, but also for forbearing to insist on her strict legal rights to exact payment of her dower on the death of her husband; and such compensation for forbearance to enforce a money payment was best calculated on the basis of an equitable rate of interest. That appeared to be consistent with Mahomedan law [see the Chapter on the "Duties (*Adab*) of

MAHOMEDAN LAW—DOWER—*concld.*

the Kazi" in the principal works on that law, which clearly showed that the rules of equity and equitable considerations commonly recognized in the courts of Chancery in England are not foreign to the Musalman system, but are in fact often referred to and invoked in the adjudication of cases. The decision in *Woomatool Fatima Begam* v. *Meerunmunnissa Khanum, 9 W. R. 318,* that "it would be inequitable to make the widow account for the profits, except on the terms of allowing her reasonable interest of the dower-debt," was approved. In suits brought by the other heirs against the widow for the taking of accounts, for a decree to the plaintiffs of their respective shares in case the dower-debt was shown to have been discharged, and for a decree for any sum received by the defendant in excess of her dower, the defendant set up a claim for interest on the unpaid dower-debt, and it being found that a portion of it remained unpaid, interest at six per cent. per annum was allowed on that amount. HAMIRA BIBI *v.* ZUBAIDA BIBI (1916)

I. L. R. 38 All. 581

MAHOMEDAN LAW—ENDOWMENT.

———— *Public Mosque—Right of management—Civil Procedure Code, 1882, s. 539—Suit for appointment of Trustees and for settlement of a scheme of management—Community composed of Sunni Mahomedans from various districts and places—Trust deed giving managements exclusively to Rhanderias—Discretion of Kazi under Mahomedan Law—Discretion of Court—Obligation to adhere to intentions of founder, and objects of Trust—Right to vary details of management in accordance with changing conditions and circumstances.* This appeal which arose out of a suit brought under s. 539 of the Civil Procedure Code, 1882, for the appointment of Trustees, and the settlement of a scheme of management related to the Sunni Jumma Musjid at Rangoon which was admittedly a public mosque dedicated to the performance of religious worship by all Sunni Mahomedans without restriction as to place of origin. The land on which the mosque was built had been granted by the Government on trust for that purpose in 1862 and it was, together with other land adjoining, purchased in 1871 from the Government by five members of the Sunni Mahomedan community who by a deed of trust in March 1872 dedicated it, and the mosque erected thereon, for the purpose of divine worship by all Sunni Mahomedans, and vested the control and management of the mosque solely in Rhanderias (Sunni Mahomedan from Rhander near Surat). *Held,* that the transactions which took place in 1871 and 1872 in no way affected the original and then existing trust, and that the trust deed did not create a new dedication, but the mosque remained as before a public mosque dedicated to the performance of worship by all Sunni Mahomedans as originally founded. With respect to the public religious trust as distinguished from a private trust, the discretion under the Mahomedan law,

MAHOMEDAN LAW—ENDOWMENT—*concld.*

of the Kazi (a discretion now exercised by the Civil Court) was very wide; for though he could not depart from the intentions of, or the rules made by, the founder as to the objects of the benefactions, yet as regards its management, which must be governed by circumstances, he had complete discretion, his primary duty being to consider the interests of the general body of the public for whose benefit the trust is created. In his judicial discretion he might vary any rule of management which he finds either not practicable or not in the best interests of the institution. *Held,* therefore, that in settling a scheme of management the question was not one involving the determination of conflicting rights, but the consideration of the best method for fully and effectively carrying out the purposes of the trust. S. 539 vested a very wide discretion in the Court, and in giving effect to its provisions and appointing new trustees and settling a scheme the Court was entitled to take into consideration not merely the wishes of the founder, so far as they can be ascertained, but also the past history of the institution, and the way in which the management has been carried on heretofore in conjunction with other existing conditions that might have grown up since its foundation. The Court also had the power of giving any directions and laying down any rules which might facilitate the work of management, and, if necessary, the appointment of trustees in the future, *Held,* also, that on the facts and in the circumstances of this case the Rhanderia section of the worshippers, all other conditions being equal, were preferably entitled to the management of the mosque. *Ibrahim Esmael* v. *Abdool Karrim Peermamode,* [*1908*] *A. C. 526; L. R. 35 I. A. 151,* distinguished. The case was accordingly remitted to the Chief Court to form a scheme by which the appointment of future trustees should be entrusted to a committee of the worshippers, the composition of which should be in the discretion of the Court, with due regard to local needs and conditions, subject to the provision that so long as circumstances do not vary a majority of such Committee should be Rhanderias; and that in settling the scheme the Court should lay down rules for the guidance of the committee in the discharge of any supervisitorial functions that it may be necessary to confide to them and for filling up vacancies on their body subject to its control. MAHOMED ISMAIL ARIFF *v.* AHMED MOOLLA DAWOOD (1916)

I. L. R. 43 Calc. 1085

MAHOMEDAN LAW—GIFT.

———— *Gift by deed of trust, Oudh Laws Act (XVIII of 1876), s. 3—Meaning of "gifts"—Delivery and acceptance of subject of gift not proved, Transfer of Property Act (IV of 1882)—Trusts Act—(II of 1882) Oudh Land Revenue Act (XVII of 1876) s. 61 et seq.—Legitimacy, proof of—Acknowledgment—Endorsement by Judge of documents admitted in evidence—Civil Procedure Code, 1877 and 1882, s. 141; 1908, O. XIII, r. 4—Undue*

MAHOMEDAN LAW—GIFT—*contd.*

prolongation of litigation—Cross-examination of witnesses. In s. 3 of the Oudh Laws Act (XVIII of 1876), which indicates the cases in which among Mahomedans, the Mahomedan Law is to be applied, the word "gifts" includes a gift made to a beneficiary through a trustee. A Mahomedan made a settlement, the parties to which were himself to the first part, his wife of the second part, and his wife and her father of the third part (the trustees), which, after reciting that Rs. 85,000 was due by the settlor to his wife for the balance of her dower, and that it had been agreed between the parties that the settlement should be in full satisfaction of the dower debt, witnessed that for the consideration stated the settlor granted certain properties to the trustees upon trust to pay the net incomes of the properties to his wife for her life and after her death upon trust for all the children of the settlor and his wife "living at the time of his decease." The deed was never executed by the wife, and there was no evidence, independent of the deed, to show that any agreement was ever entered into between the settlor and his wife that she would accept the provision made for her in the settlement in satisfaction and discharge of the unpaid balance of her dower, and she never elected in his life-time to take the benefits conferred on her by the deed in lieu of it. *Held*, that the conveyance to the trustees was a purely voluntary gift, and was void by Mahomedan law unless accompanied by a delivery of possession such as the subject of the gift was susceptible of. Subsequent election could not be held to be a substitute for the original consideration. *Chaudhri Mehdi Hasan* v. *Muhammad Hasan, I. L. R. 28 All. 439, 449 : L. R. 33 I. A. 68, 76,* and *Khajooroonnissa* v. *Rowshan Jehan, I. L. R. 2 Calc. 184 : L. R. 3 I. A. 291,* followed. The rule of law laid down by those authorities was not altered or qualified by the combined provisions of the Transfer of Property Act (IV of 1882) and the Indian Trusts Act (II of 1882), so as to make registration a substitute for delivery of possession. Both of those Acts were passed long before the first of those authorities was decided. In a suit to enforce a mortgage executed by the widow of the settlor of property dealt with by the settlement. *Held*, that during the life of the donor the evidence did not show that anything was done by him which amounted to delivery of possession of the properties, nor was anything done by the trustees or the wife alone amounting to proof of the acceptance of the gift or of an election to take under the deed. All her conduct and actions were entirely inconsistent with any such intention on her part. The trustees never entered under and by virtue of the trust deed into the receipt of the rent or income of the property comprised in the mortgage, and consequently there was no satisfactory proof that the possession of that portion of the property the subject of the gift was ever delivered by the settlor to the trustees. That being so the gift according to the Mahomedan law was void, and the mortgage sued upon was therefore a valid and binding instrument and a good security. The statements made in documents signed by the wife, she must be taken to have known the purport and effect of, it being a part of the administrative duties of a quasi-judicial character imposed by the Oudh Land Revenue Act (XVII of 1876), upon the public officials before whom the documents came, to see that she as a *pardanashin* lady had that knowledge, and the maxim "*Omnia præsumuntur recta esse acta*" was applicable. On a question as to the legitimacy of one of the settlor's sons: *Held*, on the evidence, that he was the legitimate son of the settlor, and was acknowledged by him to be so as the son of *muta* marriage. The Mahomedan law as to acknowledgment laid down in *Muhammad Allahadad Khan* v. *Muhammad Ismail Khan, I. L. R. 10 All. 289,* and *Mahammad Azmat Ali Khan* v. *Lalli Begum, I. L. R. 8 Calc. 422 : L. R. 9 I. A. 8,* and that as to evidence of repute from statement made in documents by a member of the family in *Anjuman Ara Begam* v. *Sadik Ali Khan, 2 Oudh Cases, 115,* and *Baqar Ali Khan* v. *Anjuman Ara Begam, I. L. R. 25 All. 236 : L. R. 30 I. A. 95,* followed. Their Lordships commented upon the long duration of this litigation, remarking that such delays were "discreditable to any judicial system, and there was no reason to think that they were not to a large extent avoidable." Also upon the undue prolongation of the cross-examination of witnesses by breaking it up into detached portions, than which no better system could be devised to expose witnesses to the risk of being tampered with and to promote the fabrication of false evidence. A presiding Judge should endorse with his own hand a statement that a document proved or admitted in evidence was proved against or admitted by the person against whom it was used, as laid down in s. 141 of the Civil Procedure Codes of 1877 and 1882, and practically re-enacted in O. XIII, r. 4, of the rules and orders passed under the Civil Procedure Code, 1908. With a view of insisting on the observance of the wholesome provisions of these Statutes, their Lordships will, in order to prevent injustice, be obliged, in future on the hearing of Indian appeals, to refuse to read or permit to be used any document not endorsed in the manner required. SADIK HUSAIN KHAN *v.* HASHIM ALI KHAN (1916)

I. L. R. 38 All. 627

MAHOMEDAN LAW—WAKF.

——————— *Founder herself mutawalli, if may renounce office and appoint another—Right of next in order of succession under original wakf to sue if arises immediately or on death of predecessor—Limitation*—A *mutwalli* cannot renounce his office except in the presence of the founder of the *cadi;* but whether the founder is herself the *mutawalli*, a renouncement by her to herself would be valid, and the appointment by her of another *mutawalli* would be valid at least during her lifetime, and limitation would not begin running against the person next entitled to succeed to the office under the original endowment until

MAHOMEDAN LAW—GIFT—*concld.*

MAHOMEDAN LAW—WAKF—*concld.*

her death. ABDUL GHAFOOR MIAN *v.* HAJI KHUNDKAR ALTAF HOSAIN (1915) **20 C. W. N. 605**

MAINTENANCE.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 488. **I. L. R. 39 Mad. 472**

See HINDU LAW—MAINTENANCE.

See HINDU LAW—WIDOW. **I. L. R. 39 Mad. 658**

——— **charge of—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 16 (*d*). **I. L. R. 40 Bom. 337**

——— **of child—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 488. **I. L. R. 39 Mad. 957**

——— **of junior members—**

See HINDU LAW—MAINTENANCE. **I. L. R. 39 Mad. 396**

——— **of members other than the senior male in a tarwad—**

See MALABAR LAW. **I. L. R. 39 Mad. 317**

——— **suit for—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 16 (*d*). **I. L. R. 40 Bom. 337**

MAJORITY ACT (X OF 1875).

See GUARDIANS AND WARDS ACT (VIII OF 1890), SS. 2, ETC. **I. L. R. 39 Mad. 608**

MAKBUZA.

See PRE-EMPTION **I. L. R. 38 All. 361**

MALABAR LAW.

——— *Gift to wife or children or children alone—Presumption—Incidents of tarwad property—Right of management in the senior male—Maintenance of other member's—Right to partition—Alienation of member's share—Its attachment and sale execution.* When properties are given by a person to his wife and children or children alone following the Marumakkatayyam law the presumption is that the donees take the property with the incidents of tarward property and the right of management of the properties forming the subject of the gift is vested in the senior male member amongst the donees. Persons subsequently born into the tavazhi are entitled to be maintained but not to claim partition. Any one member of a tarward or a tavazhi cannot alienate his share nor can it be attached and sold in execution of a personal decree against any of the members. *Per* SRINIVASA AYYANGAR, *J.*—It is not the giving of the properties by a person to his wife and children that constitutes the tarward; but if properties are given to a wife and children following the Marumakkattayyam law, they as tavazhi hold those properties with the incidents of tarward property and the right of management of the properties is vested in the senior male member of the tavazhi. *Kunhacha Umma* v. *Kutti Mammi Hajee, I. L. R. 16 Mad. 201,* followed. CHAKKRA KANNAN *v.* KUNHI POKKAR (1913) . . **I. L. R. 39 Mad. 317**

MALABAR TARWAD.

——— *Karnavan, becoming a stani—Succeeding karnavan incapable of business management—Karar vesting management in stani—Renewal of an otti deed by karnavan, validity of. Per* SESHAGIRI AYYAR *J.* (NAPIER *J. dubitante*): —An arrangement among the members of a Malabar tarward by which a previous karnavan who had become a *stani* was given certain specific powers of management in respect of the tarwad, without any express power to obtain renewals of mortgages in favour of the tarwad, does not deprive the actual *karnavan,* however incapable he may be, of the power of renewing usufructuary mortgages in favour of the tarwad. The renewal being binding on the members of the tarwad, they cannot set up adverse possession but must submit to a redemption by the mortgagor. The relation to the tarward of a member who had become a *stani* discussed. *Chappan Nayar* v. *Assen Kutti, I. L. R. 12 Mad. 219,* doubted. KRISHNAN KIDAVU *v.* RAMAN (1915) **I. L. R. 39 Mad. 918**

MALICE.

——— **absence of—**

See SECRETARY OF STATE FOR INDIA. **I. L. R. 39 Mad. 781**

MALIK-O-QABIZ.

See HINDU LAW—WILL. **I. L. R. 38 All. 446**

MANAGEMENT—

——— **of Church—**

See CHURCH . **I. L. R. 39 Mad. 1056**

——— **right of—**

See MAHOMEDAN LAW—ENDOWMENT. **I. L. R. 43 Calc. 1085**

——— **transfer of—**

See TRUSTEES OF A TEMPLE. **I. L. R. 39 Mad. 456**

MANAGER.

——— **liability of—**

See COSTS . **I. L. R. 43 Calc. 190**

MARRIAGE.

See HINDU LAW—MARRIAGE. **I. L. R. 38 All. 520**

——— **dissolution of—**

See DIVORCE ACT (IV OF 1869), SS. 3, 16, 37, 44 . **I. L. R. 40 Bom. 109**

——— **of coparcener—**

See HINDU LAW—PARTITION. **I. L. R. 39 Mad. 587**

MARRIAGE CUSTOM.

See CUSTOM . . **20 C. W. N. 406**

MASTER.

———— authority of—

See REVIVOR . **I. L. R. 43 Calc. 903**

MATERNAL UNCLE.

See HINDU LAW—SUCCESSION.
I. L. R. 43 Calc. 1

MATHIRI KASUVU AND SADALWAR.

See MADRAS ESTATES LAND ACT (I OF 1908), S. 13, CL. (*3*).
I. L. R. 39 Mad. 84

MAXIMS.

———— "generalia specialibus non-derogant" application of—

See SPECIFIC MOVEABLE PROPERTY.
I. L. R. 39 Mad. 1

MEASURE OF DAMAGES.

See DAMAGES **I. L. R. 43 Calc. 493**

MEMONS.

See SUCCESSION . **L. R. 43 I. A. 35**

MERGER.

See DECREE FOR POSSESSION.
I. L. R. 38 All. 509

See LANDLORD AND TENANT.
I. L. R. 43 Calc. 164

MESNE PROFITS—

See CIVIL PROCEDURE CODE (1877), S. 583.
I. L. R. 38 All. 163

See HINDU LAW—JOINT FAMILY.
I. L. R. 39 Mad. 265

See JURISDICTION.
I. L. R. 43 Calc. 650

———— claim for, by plaintiff from date of deposit—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 83 **I. L. R. 39 Mad. 579**

MIGRATION.

See SUCCESSION . **L. R. 43 I. A. 35**

MINERALS.

See MINING LEASE.

———— *Minerals, right to—Surface rights and subsoil mineral rights—Distinction between copyholders and tenants of freehold and in England—Construction of the terms "Restrictions and conditions as to the exercise of the power" in mining lease—Limitation—Adverse possession.* Where the mineral rights were never in contemplation of the parties when the lease was granted in 1830 and the lessees never exercised any mineral rights whatsoever barring taking small quantities of coal from the outcrop for domestic purposes and burning lime and the zemindar by the lease granted a village containing 380 bighas at the abnormally low rent of Rs. 17 per annum, the presumption made, in the absence of the original document, was that only the surface rights were conveyed to the grantees. In such a case the mines and minerals and the property in the subsoil remained the property and in the possession of the zemindar. The surface rights with their incidents became vested in the grantees as tenure-holders. *Hari Narain Singh Deo Bahadur* v. *Sriram Chuckerbutty, L. R. 37 I. A. 136 : s. c. I. L. R. 37 Calc. 723 ; 14 C. W. N. 716,* and *Durga Prasad Singh* v. *Braja Nath Bose, I. L. R. 39 Calc. 696 : s. c. 16 C. W. N. 482,* relied on. *Kunja Behari Seal* v. *Durga Prasad Singh, I. L. R. 42 Calc. 346 : s. c. 19 C. W. N. 203,* referred to. If the mines are presumed to be vested in, and to be the property of the zemindar, his rights must be just the same as those of a fee-simple free-hold owner of land according to English Law, who makes a grant with an express reservation of the mines to himself together with the incidents that follow therefrom. By reason of that presumption and by reason of the severence of the tenement and the reservation that must be deemed to rise in favour of the Raja, the latter has an incident to his right of property and ownership in the mines the right by implication of law to enter upon the surface of the tenure-holder's mouzah for all reasonable and necessary purposes to enable him to work the mines and exercise his mineral rights. The case of *Prince Mahomed Bakhtyar Shah* v. *Rani Dhajamoni, 2 C. L. J. 20,* in so far as it decided that the owner of a limited estate in possession can prevent the grantor or his lessee to work and appropriate the mineral during the existence of such limited estate unless the grantor had expressly reserved the mineral right in his own favour, was wrongly decided by the misapplication of the English Law of copyholds to the case of owners and tenants of freehold land. The distinction between freehold and copyhold law is that under the latter there is no division into strata and the tenant obtains possession of the entire surface and sub-soil to the centre of the earth, so that the lord of the manor cannot work the mines unless he proves a right or custom to that effect. It is under only the copyhold law and where there is no reservation of custom proved that a deadlock occurs and neither landlord or tenant can work the mines. Under the law applicable to freehold land there can be no deadlock, for if the mines be excepted the grantor, has an implied right to work them incidental to such exception ; if there be no exception then that right is with the grantee as owner of the surface and subsoil. Where a tenement is severed the person in whose favour the reservation is made is the absolute owner of the subsoil and the rights of such a person are that he has by implication of law the power to go upon the surface and do all things reasonably necessary in order to exercise the enjoyment of his property. *Bat.en Pool* v. *Kennedy, [1907] 1 Ch. 256,* and *Ramsay* v. *Blair, L. R. 1 A. C. 701,* referred to. *Held,* on the construction of a mining lease, that under cl. (*3*) of Part II of the lease, the lessees had merely power

MINERALS—*concld.*

and liberty to enter upon lands in direct possession of the Raja himself in order to exercise the mineral rights vested in them. The implied liberty to enter and work the mines subject to reasonable restrictions is not to be curtailed by the express conditions of the lease unless the intention is apparent. Part III of the lease headed "Restrictions and conditions as to the exercise of the above liberties, powers and privileges" must be construed as only restricting the liberties and privileges expressly conferred by Part II and not as any restriction upon the general right of access which is implied by law. *Earl of Cardigan* v. *Armitage, 2 B. & C. 197; 107 Eng. Rep. 361,* referred to. *Held,* also, that the defendant acquired no title by adverse possession to the mines and minerals of the land in question. NAWAGARH COAL CO., LD. *v.* BEHARILAL TRIGUNAIT (1916) **20 C. W. N. 1135**

MINING LEASE.

See TENANTS-IN-COMMON. **I. L. R. 39 Mad. 1049**

MINOR.

See GUARDIANS AND WARDS ACT (VIII OF 1890), SS. 12, 13, 17, 19, 24, 25. **I. L. R. 40 Bom. 600**

See INSOLVENCY **I. L. R. 43 Calc. 1157**

See PROMISSORY NOTE BY GUARDIAN OF MINOR **I. L. R. 39 Mad. 915**

See SOLICITOR'S LIEN FOR COSTS **I. L. R. 43 Calc. 676**

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 5, 6, 7 AND 127. **I. L. R. 38 All. 6**

——— **application for guardianship of property—**

See GUARDIANS AND WARDS ACT (VIII OF 1890), S. 7. **I. L. R. 40 Bom. 513**

——— **compromise on behalf of—**

See CIVIL PROCEDURE CODE ACT (XIV OF 1882), S. 462. **I. L. R. 39 Mad. 409**

——— **parties to arbitration—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXII, R. 7 **I. L. R. 39 Mad. 853**

——— **representative of—**

See LIMITATION ACT (IX OF 1908), SS. 3 AND 7, SCH. 1, ART. 142. **I. L. R. 40 Bom. 564**

1. ——— *Guardian—Suit to set aside a decree against a minor—Minor properly represented in such suit—Fraud or collusion of guardian.* A decree obtained against an infant properly made a party and properly represented in the case cannot be set aside by means of a separate suit except upon proof of fraud or collusion on the part of the guardian. BENI PRASAD *v.* LAJJA RAM (1916) **I. L. R. 38 All. 452**

2. ——— *Purchase of immoveable property by minor—Suit by purchaser for possession of property purchased—Transfer of Property Act (IV of 1882), ss. 54 and 55.* A minor is capable of purchasing immoveable property; and where such a purchase has been completed by execution and registration of a sale-deed, he can sue to recover possession of the property purchased upon tender of the balance of the purchase-money. Such a suit is not a suit for specific performance of a contract and no question of mutuality arises. *Mir Sarwarjan* v. *Fakhruddin Mahomed Chowdhuri, I. L. R. 39 Calc. 232,* and *Mohori Bibee* v. *Dharmodar Ghose, I. L. R. 30 Calc. 539,* distinguished. *Shib Lal* v. *Bhagwan Das, I. L. R. 11 All. 244, Baijnath Singh* v. *Paltu, I. L. R. 30 All. 125, Velayutha Chetty* v. *Govindaswami Naiken, I. L. R. 30 Mad. 524, Ulfat Rai* v. *Gauri Shankar, I. L. R. 33 All. 657, Munni Kunwar* v. *Madan Gopal, I. L. R. 33 All. 62, Bahauddin* v. *Rafaqat Husain, 18 Indian Cases 451, Raghunath Bakhsh* v. *Haji Sheikh Mahomed, 18 Oudh Cases, 115,* and *Muniya Konan* v. *Perumal Konan, 24 Mad. L. J. 342,* referred to. *Navakotti Narayana Chetty* v. *Logalinga Chetty, I. L. R. 33 Mad. 312,* dissented from. NARAIN DAS *v.* MUSAMMAT DHANIA (1915) . . **I. L. R. 38 All. 154**

MISCONDUCT.

See PROFESSIONAL MISCONDUCT.

See UNPROFESSIONAL CONDUCT.

MISDIRECTION.

See PRACTICE **I. L. R. 40 Bom. 220**

MISJOINDER OF CHARGES.

See CRIMINAL PROCEDURE CODE, SS. 222 (2), 233 . **I. L. R. 38 All. 42**

MISTAKE.

See CONTRACT ACT (IX OF 1872), SS. 20, 65 . . **I. L. R. 40 Bom. 638**

See DECREE . **I. L. R. 40 Bom. 118**

——— **in sale deed—**

See EVIDENCE ACT (I OF 1872), S. 92, CL. (*a*) . . **I. L. R. 39 Mad. 792**

rectification of—

See DECREE **I. L. R. 40 Bom. 118**

——— *Suit to set aside previous decree on ground of mistake—Competence of compromise and decree thereon—Rectification—Fraud.* A decree can be set aside by suit on the ground of fraud if of the required character. But a suit does not lie to set aside a decree in a previous suit on the ground that the Judge in passing that decree made a mistake. *Jogeswar Atha* v. *Ganga Bishnu Ghattack, 8 C. W. N. 473,* dissented from. *Mahomed Golab* v. *Mahomed Sulliman I. L. R. 21 Calc. 612, Sadho Misser* v. *Golab Singh,*

MISTAKE—*concld.*

3. C. W. N. 375, and *Bhandi Singh* v. *Dowlat Ray, 17 C. W. N. 82 ; 15 C. L. J. 675*, referred to. While in the case of a compromise, as the contract is capable of being rectified for an appropriate mistake, so, as the necessary consequence, is the decree which is merely a more formal expression given to that contract. *Huddersfield Banking Co., Ld.* v. *Henry Lister and Son, Ld.*, [*1895*] *2 Ch. 273*, followed. KUSODHAJ BHUKTA *v.* BRAJA MOHAN BHUKTA (1915) **I. L. R. 43 Calc. 217**

MITAKSHARA.

See HINDU LAW—JOINT FAMILY.
I. L. R. 43 Calc. 1031

See HINDU LAW—MITAKSHARA.
I. L. R. 40 Bom. 621

See HINDU LAW—PARTITION.
I. L. R. 43 Calc. 459
I. L. R. 38 All. 83

See HINDU LAW—SUCCESSION.
I. L. R. 38 All. 416

——— **Ch. II, S. XI, paras. 9, 11, 25—**

See HINDU LAW—STRIDHAN.
I. L. R. 43 Calc. 944

MOGULI RENT.

——— *"Moguli rent", meaning of.* "Moguli" is a word of doubtful meaning and at the best imports no more than that the rent assessed represents a proportion of the Government revenue. NAWAGARH COAL CO., LD. *v.* BEHARILAL TRIGUNAIT (1916) **20 C. W. N. 1135**

MOMBASA, MIGRATION TO.

See SUCCESSION **L. R. 43 I. A. 35**

MONEY.

——— **left with purchaser for payment to mortgagee—**

See MORTGAGE . **I. L. R. 38 All. 209**

MORTGAGE.

		COL.
1.	CONSTRUCTION	278
2.	CONTRIBUTION	279
3.	REDEMPTION	280
4.	SALE OF MORTGAGED PROPERTY . .	281
5.	SECURITY	282
6.	SEVERENCE OF MORTGAGEE'S INTEREST	283
7.	SIMPLE MORTGAGE	283
8.	SUBROGATION	283
9.	MISCELLANEOUS	284

See CIVIL PROCEDURE CODE ACT (XIV OF 1882), SS. 366, 371.
I. L. R. 40 Bom. 248

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 11.
I. L. R. 40 Bom. 614, 679

MORTGAGE—*contd.*

See CIVIL PROCEDURE CODE (1908), O. XXXIV, RR. 4, 5.
I. L. R. 38 All. 398

See CONSTRUCTION OF DEED.
I. L. R. 40 Bom. 74

See CONTRACT ACT (IX OF 1872), SS. 20, 65 . . **I. L. R. 40 Bom. 638**

See CONTRACT ACT (IX OF 1872), S. 70.
I. L. R. 40 Bom. 646

See DEKKAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), SS. 3 (*w*), 12, 13.
I. L. R. 40 Bom. 655

See EVIDENCE ACT (I OF 1872), S. 94.
I. L. R. 38 All. 103

See LIMITATION ACT (IX OF 1908), SCH. 1, ARTS. 140, 141.
I. L. R. 40 Bom. 239

See MORTGAGE DECREE.

See MORTGAGE OR SALE.
I. L. R. 40 Bom. 378

See PRE-EMPTION.
I. L. R. 38 All. 361, 530

See SIMPLE MORTGAGE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 58, 60, 98.
I. L. R. 39 Mad. 1010

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 59 . **I. L. R. 38 All. 461**

——— **anomalous—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 58, 60, 98.
I. L. R. 39 Mad. 1010

——— **by conditional sale—**

See CONSTRUCTION OF DOCUMENT.
I. L. R. 38 All. 570

——— **decree absolute for sale on—**

See CIVIL PROCEDURE CODE (1908), O. XXXIV, R. 5 . **I. L. R. 38 All. 21**

——— **executed by Collector—**

See BUNDELKHAND ALIENATION OF LAND ACT (II OF 1903), S. 17.
I. L. R. 38 All. 351

——— **extinguishment of—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 65 (*c*) **I. L. R. 39 Mad. 959**

——— **redemption of—**

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 134, 144.
I. L. R. 38 All. 138

1. CONSTRUCTION.

1. ——— *Construction of document—Anomalous mortgage—Suit for foreclosure—Limitation—Limitation Act (IX of 1908), Sch. I, Art. 135—Regulation No. XVII of 1806.*

MORTGAGE—*contd.*

1. CONSTRUCTION—*concld.*

A mortgage was made on the 25th of February, 1866, for a period of six years. It was provided that, if after six years anything remained due to the mortgagees, they might forthwith enter into possession of the mortgaged property and realize the principal and interest. It was further provided that the property would not be transferred, so long as any principal or interest remained due; and that if it was transferred, or if the money due to the mortgagee was not paid the mortgagee, without waiting for the expiry of the six years, might bring a suit for recovery of the principal and interest, and might also get possession " by completion of sale." Nothing at all was paid by the mortgagor in the way of either principal or interest and in 1867 part of the mortgaged property was transferred. Proceedings under s. 8 of Regulation XVII of 1806 were not taken by the mortgagee. In the year 1910, the representative of the mortgagee instituted a suit for foreclosure. *Held*, on a construction of the mortgage bond in suit, that the cause of action accrued in 1867, and the suit was barred by limitation. *Kishori Mohun Roy* v. *Ganga Bahu Debi, I. L. R. 23 Calc. 228*, distinguished. *Srinath Das* v. *Khetter Mohan Singh, I. L. R. 16 Calc. 693*, followed. *Shyam Chander Singh* v. *Baldeo, 10 All. L. J. 522*, and *Ram Dawar Rai* v. *Bhirgu Rai, 10 All. L. J. 538*, referred to. BANS GOPAL *v.* SHEO RAM SINGH (1915) **I. L. R. 38 All. 97**

2. ——— *Mortgage not validly executed, if creates a charge—Personal liability to repay, if to be implied from fact that document mentioned advance of money—Transfer of Property Act (IV of 1882), ss. 59, 67, 100. Held*, on the construction of a document which purported to be a usufructuary mortgage, but was not enforceable as such by reason of its not being attested as required by s. 59 of the Transfer of Property Act, that the mortgagor did not intend that he should be personally liable to repay the advance and the Trial Court and the High Court erred in assuming from the mention in the document that a certain sum had been advanced that it might be inferred that it was the intention of the parties that the mortgagor should be personally liable. That the document did not create a charge within the meaning of s. 100, Transfer of Property Act. RAM NARAYAN SINGH *v.* ADHINDRA NATH MUKHURJI (1916) . **20 C. W. N. 989**

2. CONTRIBUTION.

——— *Contribution —Payment by co-mortgagor—Guardian and Minor—Power of de facto guardian to mortgage minor's property—Mahomedan law. Held*, that where a joint mortgagor seeks contribution upon the ground that he has paid the whole mortgage debt and thus relieved the property of his co-mortgagor from a burden, it is not necessary for him to plead that he did so under compulsion. *Held*, also, that the *de facto* guardian of a minor Mahomedan is competent, in case of necessity and for the benefit of the minor, to make a valid mortgage of the minor's property. ABID ALI *v.* IMAM ALI (1915) . . . . **I. L. R. 38 All. 92**

MORTGAGE—*contd.*

2. CONTRIBUTION—*concld.*

3. REDEMPTION.

1. ——— *Mortgagee in possession—Equity of redemption—Adverse of possession while period of redemption is running—Suit to redeem by a person whose name is recorded in revenue papers. Held*, that a person could not acquire a title, by adverse possession, to land which was the subject of a usufructuary mortgage, and therefore in the possession of the mortgagees, merely because he had managed to get his name recorded in the village papers for a series of years in respect of the mortgaged property. *Lala Kanhoo Lal* v. *Manki Bibi, 6 C. W. N. 601*, not followed. *Casborne* v. *Scarfe, 1 Atk. 605*, distinguished. KUNWAR SEN *v.* DARBARI LAL. (1916) . . . **I. L. R. 38 All. 411**

2. ——— *Suit for redemption—Tender of mortgage money a condition precedent to the institution of a suit for redemption.* A usufructuary mortgage of agricultural land provided that the right to redeem should be exercised only in the month of *Jeth* of any year. *Held*, that before the mortgagor could sue for redemption it was necessary for him to prove that he had tendered to the mortgagee the mortgage-debt or such amount as he considered due on the mortgage in the month of *Jeth* of some year after the mortgage money had become payable. *Bansi* v. *Girdhari Lal, All. W. N. (1894) 143*, followed. MUHAMMAD ALI *v.* BALDEO PANDE (1915). **I. L. R. 38 All. 148**

3. ——— *Redemption, suit for—Limitation, application for execution—Time, if runs from date of decree or date of ascertainment of exact amount.* Where in a suit for redemption a certain degree was passed on 27th July 1909 and it was directed therein " that it will be necessary to have fresh accounts taken to determine the amount due to the appellants " and the amount was not definitely ascertained till the 23rd February 1910 and the application for execution was filed on 29th January 1913: *Held*, that the judgment of the District Judge, dated 27th July 1909, sets forth clearly the exact method of ascertaining the sum to be paid in redemption and the calculation of that sum was a matter purely of office routine and that the application for execution was barred by limitation. *Golam Gaffer Mandal* v. *Goljan Bibi, I. L. R. 25 Calc. 109*, followed. SURAJDEO NARAYAN SINGH *v.* MUSHAROO RAUT (1916) . **20 C. W. N. 950**

4. ——— *Redemption—Burden of proof—One mortgagor redeeming the entire mortgage—Acknowledgment—Dakhalnama—Limitation Act (IX of 1908), s. 19; Sch. I, Art. 148.* In a suit by the representatives of

MORTGAGE—*contd.*

3. REDEMPTION—*concld.*

some of the co-mortgagors for the redemption of their shares in certain property against the representatives of co-mortgagor, who had redeemed the mortgage, the plaintiffs alleged that the mortgage had been made by one Sukhjit in favour of one Muhammad Husain in the year of 1913 Sambat. The plaintiffs also relied on certain acknowledgments made by the defendant's predecessor in title. One of these was a *dakhalnama* executed by Ram Lal in 1890 which contained a description of the property and was signed by Ram Lal. The defendant contended that there was no mortgage; that he was absolute owner; that the acknowledgments had not been proved, and that the suit was time-barred. It was held by the lower Appellate Court that the date of the mortgage had not been proved, but the acknowledgments were in respect of some mortgage and that the plaintiffs were entitled to redeem. *Held*, that the rule of limitation governing a suit of this kind was that laid down in *Ashfaq Ahmad* v. *Wazir Ali, I. L. R. 11 All. 423, viz.*, that Art. 148 of Sch. I to the Limitation Act applied, that is, the limitation extended for a period of 60 years from the date of execution of the mortgage or from the date when the mortgage money became due, and the burden was upon the plaintiffs of proving the mortgage that they had set up, and that it was for them to prove that the acknowledgment relied upon by them as contained in the *dakhalnama* had been made at a date within the period of limitation. *Held*, further, that the acknowledgment contained in the *dakhalnama* amounted to nothing more than a description of the property purchased and was not acknowledgment of liability within the meaning of s. 19 of the Limitation Act. *Dharma Vithal* v. *Govind Sadvalkar, I. L. R. 8 Bom. 99*, referred to. KHIALI RAM *v.* TAIK RAM (1916) **I. L. R. 38 All. 540**

4. SALE OF MORTGAGED PROPERTY.

1. ——— *Sale of mortgaged property—Purchase money "left with the purchaser for payment to the mortgagee"—Nature of this transaction—Trust.* Where a mortgagor sells the mortgaged property and, as it is commonly expressed, leaves part of the price with the purchaser for payment to the mortgagee, the transaction is merely one of sale subject to the mortgage. No trust is created in the purchaser for payment of the portion of the price "left with him" to the mortgagee. JAMNA DAS *v.* RAM AUTAR PANDE (1916) . **I. L. R. 38 All. 209**

2. ——— *Mortgage by two persons of two properties for a single debt—Payment by one his portion—Suit against other for the balance—Transfer of Property Act (IV of 1882), s. 67.* There is nothing in the provisions of the Transfer of Property Act to support the view that as between a mortgagee and the holders of equity of redemption the mortgagee is bound to distribute his debt rateably on the mortgaged properties. *Krishna Ayyar* v. *Muthukumarasawmiya Pillai, I. L. R. 29 Mad. 217*, followed. Where, therefore, the plaintiff sued the defendant one of the mortgagors, for the recovery of the balance of mortgage money due under a deed of mortgage, without joining the other mortgagor: *Held*, that the plaintiff was entitled to a decree for a sale of the plaint-mentioned properties for the whole of the balance due on the mortgage. VENKATA SUBBA REDDI *v.* BAGIAMMAL (1914) **I. L. R. 39 Mad. 419**

MORTGAGE—*contd.*

4. SALE OF MORTGAGE PROPERTY—*concld.*

3. ——— *Mortgage by two out of three brothers, members of joint Hindu family—Death of one executant—Suit against other executant and the non-executing brother only as representing the deceased executant—Ex parte decree and sale in execution and purchase by mortgagee—Non-executing brother's original share, if passed by the sale—Decree for joint possession, if can be made—Transfer of Property Act (IV of 1882), s. 44.* Delivery of symbolical possession is operative against the judgment-debtor who from that date becomes a trespasser, and the remedy of the decree-holder, who has failed to get actual possession, is by suit. Where A and B, two out of three brothers, A, B and C, members of a joint *mitakshara* family, executed a mortgage of their whole property, and the mortgagee on the death of A sued to enforce the mortgage against B as mortgagor and also as the legal representative of A and against C, describing him only as A's legal representative. *Held*, that the decree and the sale could not affect C's original one-third share in the mortgaged property, since the question of the validity of the mortgage as against C who was not a party thereto could not be raised and decided in the mortgage suit. That in a suit by the purchaser to recover the property, C was not barred from raising the question by the doctrine of constructive *res judicata*. That the plaintiff as purchaser of an undivided two-thirds share in huts used as residence by a joint Hindu family could not be given a decree for joint possession, regard being had to s. 44 of the Transfer of Property Act. That the proper course to follow is either to direct delivery of possession by partition in execution proceedings or to leave the purchaser to his remedy by a separate suit for partition. GIRIJA KANTA CHAKRABARTY *v.* MOHIM CHANDRA ACHARJYA (1915) . . . . **20 C. W. N. 675**

5. SECURITY.

——— *Equitable mortgage—Security, scope of—Title-deeds, deposited as security, and endorsement made on promissory note given—Addition subsequently made to memorandum endorsed on note—Scope of security limited to original memorandum.* Where title-deeds of property are handed over with nothing said except that they are to be security, the law supposes that the scope of the security is the scope of the title-deeds. Where, however, title-deeds are handed over accompanied

MORTGAGE—*contd.*

5. SECURITY—*concld.*

by a bargain, that bargain must rule. Lastly, when the bargain is a written bargain, it, and it alone, must determine what is the scope and extent of the security. *Shaw* v. *Foster, L. R. 5 E. & I. App. 321, per* Lord Cairns, followed. On obtaining a loan the defendants executed a promissory note, and made an endorsement on it: "As security, grant of a house in 14th Street," to which admittedly some months afterwards, words were added which caused the endorsement to read "As security, grant of a house in Strand Road and 14th Street." There was, in their Lordship's opinion, satisfactory evidence for the defendants of identification to show that the security consisted of only one house, and that the references to it in books of account and elsewhere, were always in the singular: and on the other hand, the plaintiffs, the persons holding the security, on whom it lay to clearly satisfy the Court of the scope of the security, had failed to do so. *Held,* therefore, (upholding the appellate decision of the Chief Court), that the scope of the security was limited by the original endorsement on the note. PRANJIVANDAS JAGJIVANDAS MEHTA *v.* CHAN MA PHEE (1916) . . . . **I. L. R. 43 Calc. 895**

6. SEVERENCE OF MORTGAGEE'S INTEREST.

——————— *Mortgage—Decree of Court splitting up mortgagee's rights—Transfer of Property Act (IV of 1882), s. 67, cl. (d), analogy of.* The principle of the rule embodied in s. 67, cl. (*d*), of the Transfer of Property Act enabling one of several mortgagee's to enforce by suit the payment of his portion of the mortgage money, when the mortgagees sever their interests with the consent of the mortgagor, is applicable to a case where the severence effected by a decree of Court binding on the mortgagor. VIJAYABHUSHANAMMAL *v.* EVALAPPA MUDALIAR (1914)

I. L. R. 39 Mad. 17

7. SIMPLE MORTGAGE.

——————— *Simple mortgage—Mortgagor's power to create leases binding on mortgagee.* A simple mortgage in India, unlike a legal mortgage in England, does not arrest the mortgagor's power of leasing in the ordinary course of management and the mortgagor acts within his powers in creating a temporary lease which does not impair the value or impede the operation of the mortgage. *Banee Pershad* v. *Reet Bhunjun Singh, 10 W. R. 325,* referred to. *Keech* v. *Hall, 1 Douglas 21,* not applied. BALMUKUND RUYIA *v.* MOTI LAL BARMAN (1915) . **20 C. W. N. 350**

8. SUBROGATION.

——————— *Subrogation— Partial discharge of prior incumbrance—Purchaser of equity of redemption entitled to stand in the shoes of prior incumbrancer to the extent that the incumbrance has been discharged.* A purchaser of the equity of

MORTGAGE—*concld.*

8. SUBROGATION—*concld.*

redemption is entitled to stand in the shoes of a prior incumbrancer where the purchaser has, with the consent of that incumbrancer, partially discharged the liability. *Gurdeo Singh* v. *Chandrika Singh, I. L. R. 36 Calc. 193,* dissented from. *Chetwynd* v. *Allen, 1 Ch. D. 803,* followed. *Baroness Wenlock* v. *The River Dee Company, L. R. 19 Q. B. D. 155,* referred to. UDIT NARAIN MISIR *v.* ASHARFI LAL (1916) **I. L. R. 38 All. 502**

9. MISCELLANEOUS.

——————— *Gross and culpable negligence of vendor (first mortgagee) in leaving title deeds with vendee (mortgagor)—Whether prior mortgage postponed thereby in favour of subsequent mortgage by deposit of title deeds—Search in Registration office—Constructive notice—Priority—Transfer of Property Act (IV of 1882), ss. 3, 78.* S. 78 of the Transfer of Property Act makes its three ingredients "fraud, misrepresentation, or gross negligence" disjunctive and one cannot be defined in terms of the other or others. They are three different kinds of conduct and are in no way coextensive. *Monindra Chandra Nandy* v. *Troyluckho Nath Burat, 2 C. W. N. 750,* discussed and distinguished. *Walker* v. *Linom,* [*1907*] *2 Ch. 104,* followed. Neglect to recover the title deeds by a vendor from a vendee who has secured the greater part of the purchase-money to the vendor by giving him a mortgage on the property itself, when the vendor has full notice that the vendee is impecunious and a bad paymaster, and thereby the vendee is enabled to obtain a second mortgage on the property by deposit of the title deeds, is gross and culpable negligence (which postpones the prior mortgagee), and is rendered more so by a deliberate suppression of the existence of the mortgage in the sale deed and a suggestion that the purchase-money was required in cash and paid accordingly. *Colyer* v. *Finch, 5. H. L. 905,* followed. Registration not being itself notice, a search made by the clerk to the solicitor to the vendee (mortgagor), who has an interest to conceal the encumbrance from the second mortgagee, cannot saddle the latter with notice of the encumbrance. *Madras Building Company* v. *Rowlandson, I. L. R. 13 Mad. 383; I. L. R. 15 Mad. 286,* and *Manji Karimbhai* v. *Hoorbai, I. L. R. 35 Bom. 342,* followed. NANDA LAL ROY *v.* ABDUL AZIZ (1916) . . **I. L. R. 43 Calc. 1052**

MORTGAGE BOND.

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 132, 75. **I. L. R. 39 Mad. 981**

MORTGAGE DEBT.

——————— *Mortgage debt, if moveable or immoveable property.*—Under the Hindu, as under English law, a mortgagee is treated as personal or moveable property, the land being considered as merely a pledge or security for the money lent. SURESSUR MISSER *v.* MOHESH RANI MESRAIN (1915) **20 C. W. N. 142**

MORTGAGE DECREE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 47, 73. 104.
I. L. R. 39 Mad. 570

——— *Application for order absolute—Transfer of Property Act (IV of 1882), ss. 88 and 89—Successive applications within three years of each preceding application—Last application within twelve years of decree, if barred—Indian Limitation Act (IX of 1908), Arts. 181, 182, 183—Preliminary decree, executability of—Civil Procedure Code (Act V of 1908), s. 48.* A decree for sale was passed in a mortgage suit on the 7th October 1901, and an application for order absolute was made on the 6th April 1904; subsequent applications were made in 1907, 1910 and 1912, all within three years of the immediately preceding application; notices were sent to the judgment-debtor in most of the applications, but the latter were all dismissed without the relief prayed for being granted; the last application was made on the 15th April 1912; the judgment-debtor objected that the application was barred by limitation as more than three years had elapsed from the date of decree: *Held*, that the application was not barred by limitation. *Held*, also, that the following propositions are deducible from the decided cases:—(i) The preliminary decree passed under s. 88 of the Transfer of Property Act is executable. (ii) In order to obtain the order absolute under s. 89 of the Transfer of Property Act, steps have to be taken in execution. (iii) To such application Art. 182 or 183 of the Limitation Act will apply as the decree happens to be of a mufassil Court or of the original side of the High Court. (iv) There is a fresh starting point given to the decree-holder after the preliminary decree ripens into a final decree. (v) A decree-holder will have twelve years under s. 48 of the Code of Civil Procedure, to perfect the preliminary decree and another twelve years under the same section, if he gets the order absolute within the first twelve years. *Abdul Majid* v. *Jawahir Lal, I. L. R. 36 All. 350*, followed. *Munna Lal* v. *Sarat Chandar, 21 C. L. J. 118*, followed. *Ashfaq Husain* v. *Gaurie Sahai, I. L. R. 33 All. 264*, explained. *Mallikarjunudu* v. *Lingamurti Pantulu, I. L. R. 25 Mad. 245*, and *Rungah Goundan and Co.* v. *Nanjappa Row, I. L. R. 26 Mad. 780*, referred to. HUSAIN *v.* KARIM (1915)
I. L. R. 39 Mad. 544

MORTGAGE OF IMMOVEABLE PROPERTY.

See PRESIDENCY BANKS ACT (XI OF 1876), SS. 36, 37.
I. L. R. 39 Mad. 101

MORTGAGE OR SALE.

See CONSTRUCTION OF DOCUMENT.
I. L. R. 40 Bom. 378

MORTGAGE SUIT.

——— decree in—

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 47, O. XXII, R. 10.
I. L. R. 39 Mad. 488

MORTGAGED PROPERTY.

——— sale of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 47, 73, 104.
I. L. R. 39 Mad. 570

MORTGAGEE.

See DEKKAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).
I. L. R. 40 Bom. 483

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 132, 75. **I. L. R. 39 Mad. 981**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 83 . **I. L. R. 39 Mad. 579**

——— in possession—

See MORTGAGE . **I. L. R. 38 All. 411**

——— with possession, right of, to recover rent—

See MADRAS LOCAL BOARDS ACT (V OF 1884), S. 73 . **I. L. R. 39 Mad. 269**

MORTGAGOR.

——— dispossession of, after mortgage—

See ADVERSE POSSESSION.
I. L. R. 39 Mad. 811

——— personal execution against—

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 47, 73, 100.
I. L. R. 39 Mad. 570

——— redemption suit by—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), SS. 366, 371.
I. L. R. 40 Bom. 248

MORTGAGOR IN POSSESSION.

——— duty of, to pay public charges—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 65 (*c*).
I. L. R. 39 Mad. 959

MOSQUE.

See MAHOMEDAN LAW—ENDOWMENT.
I. L. R. 43 Calc. 1085

MOVEABLE PROPERTY.

——— suit to recover—

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882), S. 19, CL. (*5*).
I. L. R. 39 Mad. 219

MUAFI LAND.

See PRE-EMPTION.
I. L. R. 38 All. 260

MUNICIPAL AFFAIRS AT ADEN.

See ADEN SETTLEMENT REGULATION (VII OF 1900), S. 13.
I. L. R. 40 Bom. 446

MUNICIPAL LAW.

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. III OF 1901), S. 42.
I. L. R. 40 Bom. 166

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 115 . **I. L. R. 40 Bom. 509**

1. ———— *Removal of structures—Compensation—Declaration—Specific Relief Act (I of 1877), s. 42—Calcutta Municipal Act (Beng. III of 1899), ss. 341, 617.* Upon the Corporation of Calcutta giving notice under the Calcutta Municipal Act, 1899, s. 341, to the owner of a building requiring him to remove a fixture attached thereto so as to project over, incroach on, or obstruct any public street or land, the payment of compensation, provided for in the case of a fixture, erected before June 1, 1863, is not a condition precedent to its removal or its demolition under s. 450, sub-s. (*c*); the compensation is assessable by the Court of Small Causes under s. 617, and not in a suit. If, however, the Corporation declines to admit the owner's right to compensation, a Subordinate Judge has a discretionary power under the Specific Relief Act, 1877, s. 42, to make a declaration that the fixture was erected before June 1, 1863, and that the owner was entitled to compensation. JOSEPH *v.* CALCUTTA CORPORATION . . . . . **L. R. 43 I. A. 243**

2. ———— *Roads which vest in the Municipality—Public, when they have a right to go over private pathway—Difference between roads vested in the Municipality and others as regards Municipality's rights—Bengal Municipal Act (Beng. III of 1884), ss. 30, 31.* Under s. 30 of the Bengal Municipal Act as amended by recent legislation, private pathways do not vest in the Municipality. *Chairman of the Howrah Municipality* v. *Khetra Krishna Mitter, I. L. R. 33 Calc. 1290,* followed. *Kumud Bandhu Das Gupta* v. *Kishori Lal Goswami, (1911) S. A. Nos. 488 and 838 of 1909 (unrep.),* and *Kamal Kamini Debi* v. *Chairman, Howrah Municipality, (1909) S. A. No. 2134 of 1907 (unrep.),* dissented from. The Municipality may, however, have control over such a pathway, if the public have a right to go over it, as provided for in s. 31 of the Bengal Municipal Act. The difference between roads vested in the Municipality and other roads is that in the former case the Municipality is responsible for lighting, watering, sewering and clearing the roads, and in the other case, the Municipality has only the power of control to prevent the road from becoming a nuisance, or the rights of the public from being interfered with. CHAIRMAN, HOWRAH MUNICIPALITY *v.* HARIDAS DATTA (1915)
I. L. R. 43 Calc. 130

MUSSALMAN WAKF VALIDATING ACT (VI OF 1913).

———— s. 3—

See WAKF, VALIDITY OF.
I. L. R. 43 Calc. 158

MUTAWALLI.

See WAKF . **I. L. R. 43 Calc. 467**

MUTH.

———— nature, object and custom of—

See HINDU LAW—ENDOWMENT.
I. L. R. 43 Calc. 707

N

NATURAL SON.

See HINDU LAW—STRIDHAN
I. L. R. 43 Calc. 944

NEGLIGENCE.

See MORTGAGE . **I. L. R. 43 Calc. 1052**

———— of servants of Public Works Department—

See TORT . . **I. L. R. 39 Mad. 351**

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)—

———— ss. 28, 30—

See PROMISSORY NOTE BY GUARDIAN OF MINOR. . . **I. L. R. 39 Mad., 915**

———— ss. 30, 47, 59, 74, 94—

———— *Hundi, payable to bearer—Surety—Contract of suretyship only between surety and creditor—Right of surety against principal debtor—Indian Contract Act (IX of 1872), ss. 126, 140, 141, 145, 69 and 70—Right of holder, not being holder in due course—Delivery of hundi payable to bearer, effect of—Holder, right of.* A person who becomes a surety without the concurrence thereto of the principal debtor, gets as against the latter, only the rights given by ss. 140 and 141 of the Indian Contract Act (IX of 1872) and not those given by s. 145. Such a person cannot invoke in his favour the aid of ss. 69 and 70 of the Act. *Hodgson* v. *Shaw, 3 My. K. 183,* referred to. A person obtaining by payment, after dishonour by the drawee, delivery of a negotiable instrument payable to bearer, acquires the rights of a holder thereof and can, under s. 59 of the Negotiable Instruments Act (XXVI of 1881), recover from the drawer, the amount due thereon, on proof of presentment and notice of dishonour as required by ss. 74, 30 and 94 of the Act. *Gajapathy Kistna Chandra Deo* v. *Srinivasa Charlu, Appeal No. 25 of 1909,* referred to. *Nanak Ram* v. *Mehin Lal, I. L. R. 1 All. 487,* distinguished. MUTHU RAMAN *v.* CHINNA VELAYAM (1916) **I. L. R. 39 Mad. 965**

NEWSPAPER.

———— copies of, forfeiture of—

See PRESS ACT (I OF 1900), SS. 3 (*1*), 4 (*1*), 17, 19, 20, 22.
I. L. R. 39 Mad. 185

NEXT FRIEND.

See COSTS . **I. L. R. 43 Calc. 67**

NOABAD TALUK.

——————— *Khas Mehal—Taluk, a tenure—Non-permanent taluk—Sale for arrears of revenue—Purchaser's title—Beng. Act VII of 1868, s. 12—Cause of action.* A Noabad taluk is a tenure, the land being *khas* mehal land of Government. Where it was found that the tenure in question was not a permanent tenure, the purchaser thereof at sale under Act XI of 1859 acquired it in the same estate in which it was held at the time of the last settlement as provided by s. 12 of Bengal Act VII of 1868. GANGADAS SEAL *v.* THE SECRETARY OF STATE FOR INDIA (1916) . **20 C. W. N. 636**

NON-COMPOUNDABLE OFFENCE.

——————— *Conveyance executed in consideration of complainant withdrawing prosecution.* Suit to set aside same after prosecution withdrawn if lies. BINDESHARI PRASAD *v.* LEKHRAJ SAHU (1916) . . **20 C. W. N. 760**

NON-OCCUPANCY RAIYAT.

——————— *Holding over after term, if holds on from year to year—Ejectment.* Under the Bengal Tenancy Act there is no raiyat who holds from year to year and if the tenant is a non-occupancy raiyat who does not hold under a lease for a term, he cannot be ejected under the provisions of cl. (*c*) of s. 44. JOTIRAM KHAN *v.* JONAKI NATH GHOSE (1914)
20 C. W. N. 258

NON-TRANSFERABLE HOLDING.

——————— *Non-transferable raiyati holding—Sale in execution of money decree—Purchaser allowed by raiyat to take a portion of the holding—Surrender by raiyat of whole holding—Raiyat continuing in occupation—Purchaser if may be ejected.* Where a purchaser (in execution of a money decree) of a non-transferable raiyati holding being resisted by the raiyat, by arrangement with the latter, was given a portion of the holding, the raiyat retaining the rest; and subsequently the raiyat expressly surrendered the whole holding to his landlord, though it appeared that even after such surrender he went on occupying the portion retained by him under the arrangement. That the surrender being obviously illusory, the original tenancy subsisted and protected the purchaser from ejectment by the landlord. NOBO KISHORE SAHA *v.* DHANANJOY SAHA (1916)
20 C. W. N. 610

NON-TRANSERABLE OCCUPANCY HOLDING.

See LANDLORD AND TENANT.
I. L. R. 43 Calc. 878

NORTH-WESTERN PROVINCES ACTS.

See UNITED PROVINCES AND OUDH ACTS.

NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (X OF 1900).

——————— **s. 132**— *Breach of rule made under cl. (e) of s. 130—Notice.* In order to render a person liable to punishment for breach of a rule made under cl. (*e*) of s. 130 of the Municipalities Act (Local I of 1900), by reason of the continuance of sale or exposure for sale of certain specified article upon any premises which were at the time of the making of such rules used for such purpose, it is necessary that six months' notice in writing should have been served upon him in the manner provided by law; and conviction in the absence of such notice is bad in law. EMPEROR *v.* GHAMMAN (1916) . . **I. L. R. 38 All. 455**

NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (X OF 1900)—*concld.*

——————— **s. 132**—*concld.*

NORTH-WESTERN PROVINCES LAND REVENUE ACT (XIX OF 1873)—

——————— **s. 205B—**

See OUDH LAND REVENUE ACT (XVII OF 1876), SS. 173, 174.
I. L. R. 38 All. 271

NOTICE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92 . **I. L. R. 40 Bom. 541**

See CONSTRUCTIVE NOTICE.

See N.-W. P. AND OUDH MUNICIPALITIES ACT (X OF 1900), S. 132.
I. L. R. 38 All. 455

See NOTICE OF SUIT.

See NOTICE TO QUIT.

See REVIEW . **I. L. R. 43 Calc. 178**

See REVIVOR . **I. L. R. 43 Calc. 903**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 40 . **I. L. R. 40 Bom. 498**

See WASTE LANDS.
L. R. 43 I. A. 303

NOTICE OF SUIT.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 80 . **I. L. R. 40 Bom. 392**

NOTICE TO QUIT.

See LANDLORD AND TENANT.
I. L. R. 43 Calc. 164

NOTIFICATION OF PAYMENT.

See EXECUTION OF DECREE.
I. L. R. 43 Calc. 207

NUISANCE.

——————— *Legal nuisance—Erection of horse-stables, when a nuisance—Easements Act (V of 1882), s. 15—Degrees of nuisance—Value of expert medical evidence in a case of nuisance—Consideration of policy or abstract public rights, outside the scope of inquiry—License from the Municipal Sanitary authorities for erection of stables, no defence in an action for nuisance. Specific Relief Act (I of 1877)—Relief by injunction as well as damages—Plaintiffs suing as trustees interested in reversion and as residents—Civil Procedure Code (Act V of 1908), O. I, r. 1.* Prior to the year 1903, the first plaintiff was absolutely

NUISANCE—*contd.*

entitled to, and possessed of, a piece of land with a house standing thereon situate at Thakurdwar Road, Bombay. By an Indenture of Settlement, dated the 12th of Jaunary 1903, the first plaintiff conveyed the said property to herself and her husband, the second plaintiff, upon trusts for the benefit of herself and her husband and their issue. The defendant was the lessee for a period of 21 years commencing from 1st of January 1911, of an open piece of land adjoining the property of the plaintiffs and situate on the eastern side thereof. The said piece of land was formerly used for many years, and, as the defendant alleged, for nearly a century, for tethering bullocks and keeping bullock carts, up to the year 1908 when such user terminated. In October 1913, the defendant erected a block of stables, parallel to the length of the plaintiff's house and at a distance of about 20 to 35 feet therefrom for the accommodation of 75 horses, to which was added another block for the accommodation of 35 hack carriages. The plaintiffs complained that the stables erected by the defendant rendered their house uncomfortable and unhealthy and constituted a serious nuisance. They also alleged that in consequence of the nuisance, the tenant on the first floor vacated the same and that the plaintiffs and their family suffered in health and were obliged to remove to another house. The plaintiffs sued in their double capacity as trustees interested in the reversion and as actual residents, praying for a perpetual injunction to restrain the defendant from the continuance or repetition of the said nuisance and for damages in the sum of Rs. 1,221 for nuisance caused upto the date of the suit, or in the alternative for a sum of Rs. 15,000 as damages for the depreciation in value of the plaintiff's property, by reason of the said nuisance. The defendant denied that the stables were a nuisance in law and pleaded without prejudice to his aforesaid contention—(*a*) that the nuisance complained of had been acquired by him as an easement, (*b*) that the stables were erected in accordance with the Bye-laws of the Bombay Municipality, and the license of using them as stables was granted to him after the said premises were inspected and due inquiries made by the Municipal Commissioner and the Health Officer of Bombay, and (*c*) that the plaintiffs were not entitled to sue in their double capacity. *Held*, (*i*) that under the Indian Easements Act, whatever easement may have been acquired by the owners of the land to cause a nuisance to the adjacent servient tenement by the tethering of bullocks on the vacant land admittedly came to an end in the year 1908, *i.e.*, considerably more than two years before the nuisance complained of came into existence and before the date of the suit; (*ii*) that the nuisance complained of by the plaintiffs was totally different from the nuisance which previously existed, and on general principle, the defence of easement could not be sustained; (iii) that if the nuisance existed, it was no answer to say that the defendant had conformed to the latest requirements of the Municipal Sanitary authorities, and had done

NUISANCE—*concld.*

everything in his power and taken all reasonable precautions to prevent its existence; (iv) that the stables erected by the defendant, having regard to their size and their distance from their dwelling house of the plaintiffs constituted a nuisance; (v) that having regard to the comprehensive language of O. I, r. 1 of the Civil Procedure Code of 1908, there could not be any objection to the plaintiffs suing in their double capacity, and that the plaintiffs were entitled to obtain relief by way of injunction and damages. A legal nuisance is rather an evasive shifting and intangible thing hard to be pinned down by a verbal definition. It must always be conditioned by time and place and circumstances and the Court shall have regard to the station in life of the plaintiff and his family, and the locality and the nature of the nuisance complained of. *Walter* v. *Selfe, 4 De G. & Sm. 315, 322,* and *Sturges* v. *Bridgman, 11 Ch. D. 852,* referred to. Where the nuisance was of the kind to injure the health or seriously imperil the life of those complaining of it, the Court would not hesitate to prevent it by way of injunction; but where the nuisance went no further than to diminish the comforts of human life, there would always be a question whether the Court would proceed against him who causes that nuisance by injunction, or compensate the sufferer in damages. In the absence of statutory enactments, no general considerations of mere policy, or rather abstract public rights, can be allowed to prevail against what the law recognises, and always has recognised, as the legal rights of the individual. *The Attorney-General* v. *The Town Council of the Borough of Birmingham, 6 W. R. 811,* referred to. BAI BHICAIJI *v.* PEROJSHAW JIVANJI (1915)

I. L. R. 40 Bom. 401

O

OATH.

See OATHS ACT (X OF 1873), SS. 5, 6, 13.

I. L. R. 38 All. 49

OATHS ACT (X OF 1873).

———— **ss. 5, 6, 13**—*Evidence Act (I of 1872), s. 118—Evidence—Statement of witness not recorded on oath—Capacity of child of tender years to testify.* The fact that a Court has advisedly refrained from administering an oath to a witness is not sufficient by itself to render the statement of such witness inadmissible. But a Court should only examine a child of tender years as a witness after it has satisfied itself that the child is sufficiently developed intellectually to understand what it has seen and to afterwards inform the Court thereof, and if the Court is so satisfied it is best that the Court should comply with the provisions of s. 6 of the Indian Oaths Act, in the case of a child, just as in the case of any other witness. *Queen-Empress* v. *Maru, I. L. R. 16 All. 207,* dissented from. EMPEROR *v.* DHANI RAM (1915)

I. L. R. 38 All. 49

OATHS ACT (X OF 1873)—*concld.*

———— **ss. 8, 9, 10**—*Principal and agent —Agent holding power of attorney to conduct suit for principal—Power of agent to agree to suit being decided according to statement on oath of defendant.* A lady who was plaintiff in a suit gave to her husband a special power of attorney to conduct the case in her behalf "as he should deem fit." He was authorized to compromise or withdraw the suit, to refer it to arbitration and to nominate arbitrators, and finally the plaintiff said that every step that he might take in the conduct of the case was to be considered as having been taken by herself. *Held*, that the husband had power to take action under ss. 8, 9, and 10 of the Oaths Act, 1873. *Sadashiv Rayaji* v. *Maruti Vithal, I. L. R. 14 Bom. 455*, dissented from. WASI-UZ-ZAMAN KHAN *v.* FAIZA BIBI (1915) **I. L. R. 38 All. 131**

OCCUPANCY-HOLDING.

See AGRA TENANCY ACT (II OF 1901), S. 22 . . **I. L. R. 38 All. 325**

See OCCUPANY RIGHT.

———— **transfer of part of—**

See LANDLORD AND TENANT. **I. L. R. 43 Calc. 878**

1. ———— *Non-transferable occupancy holding—Purchaser of share, rights of, as to possession against landlord.* Plaintiffs Nos. 2 and 3 were tenants in respect of one-half only of an occupancy holding which was not transferable and the plaintiff No. 1 purchased their interest. *Held*, that the plaintiff as purchaser of a share of an occupancy-holding was entitled to possession even as against the landlord who had no right to take possession of the property. PURNA CHANDRA TRIVEDI *v.* CHANDRA MOHINI DASSI (1916) **20 C. W. N. 586**

2. ———— *Non-transferable occupancy holding—Sale by landlord in execution of rent-decree, under Civil Procedure Code, prevented by deposit by purchaser from registered tenant—Withdrawal of deposit by landlord, if amounts to recognition of purchaser as tenant.* Prior to the passing of the Bengal Tenancy (Amending) Act of 1907, a co-sharer landlord obtained a decree for rent against the registered tenant of a non-transferable occupancy-holding in favour of himself and his other co-sharer. He took out execution under the Civil Procedure Code and not under the provisions of the Bengal Tenancy Act. The plaintiff who had purchased the holding in execution of a money-decree against the registered tenant deposited the decretal amount in Court for payment to the decree-holder landlord, alleging in his petition that he had acquired a right to the holding by purchase and that he made the deposit to protect his right and reserved his right to realise the amount deposited by him from the former tenant or his heir as the tenants of the holding. The decree was thereupon treated as satisfied and the attachment was withdrawn, and the amount deposited was withdrawn by the landlord. *Held*,

OCCUPANCY-HOLDING—*concld.*

that upon such deposit, the landlord could not as in a case under the Bengal Tenancy Act, contest the right of the purchaser to make the deposit, and the withdrawal of the deposit did not amount to a recognition of the purchaser by the landlord. *Thomas Barclay* v. *Syed Hossein Ali Khan, 6 C. L. J. 601*, and *Nalini Behary Ray* v. *Fulmani Dasi, 14 C. L. J. 388, 391*, distinguished. SURENDRA NARAIN MAHATA *v.* JUGAL KISHORE GHOSH (1916) . . . **20 C. W. N. 849**

OCCUPANCY RIGHT.

See LANDLORD AND TENANT. **I. L. R. 43 Calc. 164**

See LANDLORD AND TENANT—OCCUPANCY RIGHT.

See OCCUPANCY-HOLDING.

———— **acquisition of, by landholder.**

See MADRAS ESTATES LAND ACT (I OF 1908), S. 6, SUB-S. (*6*) AND S. 8. **I. L. R. 39 Mad. 944**

———— *Incidents of another tenancy under the same landlord but in different localities in the occupation of the occupancy raiyat—Bengal Tenancy Act (VIII of 1885), s. 182.* The provisions of the Bengal Tenancy Act are applicable to a tenancy for building a shop in a market in which the tenant afterwards came to reside, where the tenant has occupancy right on certain *jamas* under the same landlord in a different village from before the acquisition of the tenancy for building the shop. *Golam Mowla* v. *Abdul Sowar Mundul, 13 C. L. J. 255, Protap Chandra Das* v. *Bisseswar Pramanick, 9 C. W. N. 416, Kripa Nath Chakrabutty* v. *Sheikh Anu, 10 C. W. N. 944*, and *Harihar Chatterji* v. *Dinu Bera, 14 C. L. J. 170*, referred to. BHIKARIRAM BHAGAT *v.* MAHARAJ BAHADUR SINGH (1915) . **I. L. R. 43 Calc. 195**

OFFENCE.

———— **committed in respect of different persons—**

See JOINDER OF CASES. **I. L. R. 38 All. 457**

———— **compounding of—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 345. **I. L. R. 39 Mad. 946**

OFFERINGS TO A TEMPLE.

———— *Transferability—Transfer of Property Act (IV of 1882), s. 6, cl. (a).* There are certain rights that cannot be transferred. They are *res extra commercium*; for instance, sacerdotal office which belongs to the priest of a particular class. Similarly a right to receive offerings from pilgrims, resorting to a temple or shrine, is inalienable. The chance that future worshippers will give offerings is a mere possibility and as such it cannot be transferred. *Lakshmanaswami Naidu* v. *Rangamma, I. L. R. 26*

OFFERINGS TO A TEMPLE—*concld.*

Mad. 31 ; Kashi Chandra v. *Kailash Chandra, I. L. R. 26 Calc. 356 ; Dino Nath Chuckerbutty* v. *Pratap Chandra Goswami, I. L. R. 27 Calc. 30*, referred to. PUNCHA THAKUR *v.* BINDESWARI THAKUR (1915) . . **I. L. R. 43 Calc. 28**

OFFICIAL ASSIGNEE.

See LIQUIDATOR **I. L. R. 43 Calc. 586**

——— right of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXVIII, R. 5.
I. L. R. 39 Mad. 903

OFFICIAL CORRUPTION.

See CONTRACT . **I. L. R. 43 Calc. 115**

OFFICIAL RECEIVER.

See PROVINCIAL INSOLVENCY ACT (III OF 1907), SS. 20 AND 22.
I. L. R. 39 Mad. 479

See RECEIVER.

——— order to, without notice—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 46, CL. (*3*).
I. L. R. 39 Mad. 593

ONUS.

See PRESS ACT (I OF 1910), SS. 3 (*1*), 4 (*1*), 17, 19, 20 AND 22.
I. L. R. 39 Mad. 1085

ONUS OF PROOF.

See LEGAL NECESSITY.
I. L. R. 43 Calc. 417

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 140, 141 **I. L. R. 40 Bom. 239**

See RENT, SUIT FOR.
I. L. R. 43 Calc. 554

OPIUM ACT (I OF 1878).

——— s. 9 (c)—*Illicit possession of opium—Possession of substance unfit for use as opium and containing only traces of opium.* The accused were convicted under s. 9 (*c*) of the Opium Act for being in illicit possession of two and a half seers of opium. The substance seized from the possession of the accused was, on chemical analysis, found to contain traces of opium amounting to less than one per cent. and to be unfit for use as opium. There was no evidence as to whether the traces of opium could be extracted from the mass and used as opium : *Held*, that the conviction could not be sustained. MAHOMED KAZI *v.* KING-EMPEROR (1916) . **20 C. W. N. 1206**

——— s. 15.

See RESCUE FROM LAWFUL CUSTODY.
I. L. R. 43 Calc. 1161

ORDER ABSOLUTE.

——— application for—

See MORTGAGE DECREE.
I. L. R. 39 Mad. 544

OTTI-DEED.

See MALABAR TARWAD
I. L. R. 39 Mad. 918

OUDH ESTATES ACT (I OF 1869).

——— ss. 8, 10—

——— *Sanad granted by Government and death of grantee before Act passed into law—Status and rights of grantee—Name of grantee entered in lists 1 and 2 after his death—Descent by primogeniture—Custom of descent of non-taluqdari property acquired by taluqdar, a Mahomedan—Burden of proof—Presumption of pre-existing custom—Wajib-ul-arzes, value of.* On the 17th of October, 1861, *J*, a Mahomedan and the ancestor of the parties to this appeal, received from the British Government a *sanad* conferring on him the full proprietary right, title and possession of the taluqa of Deogaon, with a condition that in the event " of you or any of your successors dying intestate, the estate shall descend to the nearest male heir, *i.e.*, sons, nephews, etc., according to the rule of primogeniture " He died in 1865, but his name was entered in lists 1 and 2 of those prepared under s. 3 of the Oudh Estates Act (I of 1869). *Held*, that *J* had acquired, as declared by s. 3 of the Act, a " permanent, heritable and transferable right " in his estate, and was unquestionably a " taluqdar " within the meaning of the Act. His death before the Act was passed into the law made no difference in his status or in his rights. The provision in s. 8, that the lists should be prepared " within six months after the passing of the Act," was clearly meant as a limit for their completion, and not for their initiation. Descent by primogeniture was not confined to cases coming under list 3. The provision in s. 10 that " the Courts shall take judicial notice of the said list and shall regard them as conclusive evidence that the persons named therein are taluqdars " does not mean that they shall be conclusive merely as to the fact that the persons entered therein are taluqdars as entered in s. 2, but also that the Courts shall regard the insertion of the names in those lists as " conclusive evidence " of the fact on which is based the status assigned to the persons named in the different lists. *Achal Ram* v. *Udai Pratab Addiya Dat Singh, I. L. R. 10 Calc. 511 ; L. R. 11 I. A. 1*, and *Thakur Ishri Singh* v. *Thakur Baldeo Singh, I. L. R. 10 Calc. 792 ; L. R. 11 I. A. 135*, discussed and explained. *J's* name could therefore only have been included in list 2 by virtue of a pre-existing custom governing the devolution of the estate to a single heir ; and s. 10 made that entry conclusive evidence of that fact. The present suit related to property acquired by the son of *J* who succeeded him, which, it was contended by the appellant (plaintiff), descended not by the custom of lineal primogeniture set up by the respondent (defendant) but in accordance with the ordinary Mahomedan law. *Held*, that the provision as to conclusiveness in s. 10 is confined to estates " within the meaning of the Act," and does not apply to non-taluqdari property, but the exist-

OUDH ESTATES ACT (I OF 1869)—*concld.*

———— **ss. 8, 10**—*concld.*

ence of the pre-existing custom gives rise to a presumption in the case of a family governed by Mahomedan law, which makes no distinction between ancestral and self-acquired property, that if a custom governs the succession to the taluqa, it attaches also to the personal acquisitions of the last owner left by him on his death, and it is for the person who asserts that these properties follow a line of devolution different from that of the taluqa to establish it. *Janki Prasad Singh* v. *Dwarka Prasad Singh, I. L. R. 35 All. 391 ; L. R. 40 I. A. 170 ; Maharajah Pertab Narain Singh* v. *Maharanee Subhao Kooer, I. L. R. 3 Calc. 626 ; L. R. 4 I. A. 228,* and *Parbati Kumari Debi* v. *Jagadis Chunder Dhabal, I. L. R. 29, Calc., 433 ; L. R. 29 I. A. 82,* distinguished as being cases governed by the Hindu law of the Mitakshara, which recognizes different courses of devolution for ancestral and self-acquired properties. Wajib-ul-arzes which merely narrated traditions and purported to give the history of devolutions in certain families, not even of the narrator, were held to be not sufficient to rebut the presumption of pre-existing custom. MURTAZA HUSAIN KHAN *v.* MUHAMMAD YASIN KHAN (1916)

I. L. R. 38 All. 552

OUDH LAND REVENUE ACT (XVII OF 1876).

———— **ss. 173, 174**—*Contract entered into by disqualified proprietor creating charge on his property whilst under superintendence of Court of Wards—Liability of property in execution of decree obtained in respect of such contract after property has been released—N.-W. P. Land Revenue Act (XIX of 1873), s. 205B, as amended by United Provinces Court of Wards Act (III of 1899).* S. 174 of the Oudh Land Revenue Act (XVII of 1876) enacts, with respect of persons whose property is under the superintendence of the Court of Wards, that, "no such property shall be liable to be taken in execution of a decree made in respect of any contract entered into by any such person while his property is under such superintendence." *Held,* that the phrase, "while his property is under such superintendence" was annexed to and elucidative of, the verbal expression "contract entered into by such person." Where, therefore, a contract has been made during such period of time, the effect of the section is to protect the property against attachment in execution of the decree, even after the property has been released from superintendence of the Court of Wards. The *dictum* to the contrary in *Rameshur Bakhsh Singh* v. *Dhanpal Das, 14 Oudh Cases 6,* overruled. DEBI BAKHSH SINGH *v.* SHADI LAL (1916) . . . . **I. L. R. 38 All. 271**

P

PAIK.

———— **suit to eject—**

See REMAND . **I. L. R. 43 Calc. 1104**

PARTIES.

———— **addition of—**

See REMAND . **I. L. R. 43 Calc. 938**

———— **privity between—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 11 . **I. L. R. 40 Bom. 679**

———— **rights of—**

See LEASE . **I. L. R. 43 Calc. 332**

PARTITION.

See CIVIL PROCEDURE CODE (1908), O. II, R. 2 . **I. L. R. 38 All. 217**

See DECREE . **I. L. R. 40 Bom. 118**

See HINDU LAW—JOINT FAMILY.
I. L. R. 43 Calc. 1031
I. L. R. 39 Mad. 159

See HINDU LAW—PARTITION.

See UNITED PROVINCES LAND REVENUE ACT (III of 1901), ss. 110, 111, 112.
I. L. R. 38 All. 115

See PARTITION BY COLLECTOR.

See U. P. LAND REVENUE ACT (III OF 1901), S. 111 (*l*) (*b*).
I. L. R. 38 All. 70

See U. P. LAND REVENUE ACT (III OF 1901), SS. 111, 112, 233 (*k*).
I. L. R. 38 All 302

See U. P. LAND REVENUE ACT (III OF 1901), S. 233, CL. (*k*).
I. L. R. 38 All. 243

———— **right to—**

See HINDU LAW—PARTITION.
I. L. R. 43 Calc. 1118

See MALABAR LAW.
I. L. R. 39 Mad. 317

———— **suit for—**

See BENAMIDAR . **I. L. R. 43 Calc. 504**

1. ———— *Partition suit, costs in, before preliminary decree when defendant successfully contests plaintiff's claim for partition.* That although ordinarily in a suit for partition pure and simple the parties have to bear their own costs of the suit up to the stage of the preliminary decree, the plaintiff must in this case pay the costs of the defendants who have successfully contested his claim for partition. LOKE NAHTH SINGH *v.* DHAKESHWAR PROSAD NARAYAN SINGH (1914).
20 C. W. N. 51

2. ———— *Partition, suit for, by co-sharer—Suit if maintainable without proof of actual or constructive possession—Possession by co-sharer if and when may be adverse—Evidence necessary to establish adverse possession by co-tenant —Ouster of co-tenant how may be effected to create adverse possession—Land Registration Act, registration of name under effect of, if necessarily implies possession—Partition as distinguished from ejectment—Costs in partition suit before preliminary*

PARTITION—*contd.*

decree when defendant successfully contests plaintiff's claim for partition. The plaintiff sought partition of an estate of which he claimed to own an one anna share by purchase. He alleged that after his purchase he had his name registered under the Land Acquisition Act in place of his vendor and was in possession since the date of his purchase. The lower Court found that the plaintiff was in possession of his share and made a preliminary decree for partition. The defendants appealed. *Held*, that although as a general rule the possession of one co-tenant is not deemed adverse to the other co-tenants the existence of the relation of co-tenancy does not preclude one co-tenant from establishing an adverse possession in fact as against the other co-tenants; and though the co-tenant enters in the first instance without claiming adversely his possession afterwards may become adverse. In order to render the possession of one co-tenant adverse to the others not only must the occupancy be under an exclusive claim of ownership in denial of the rights of the other co-tenants, but such occupancy must have been made known to the other co-tenants either by express notice or by such open and notorious acts as must have brought home to the other co-tenants knowledge of the denial of their rights. The evidence to show adverse possession by one co-tenant must be much clearer than between strangers to the title and the hostile intent of the co-tenant in possession must be shown by unequivocal conduct. The ouster of the other co-tenants in order to render the possession adverse need not be by violent or intimidating expulsion or repulsion; nor need notice of the adverse holding be actually brought home to the other co-tenant by personal or formal communication, but it is sufficient, if the contrary is not proved, that the circumstances show that such knowledge may reasonably be presumed. *Held*, that the registration of the name of a person under the Land Registration Act is some evidence of possession but the weight to be attached to this fact must depend upon the circumstances of each case. The fact that the plaintiff was able to get his name substituted in the place of his vendor does not necessarily show that he is in possession of any share of the estate. That the plaintiff having failed to prove that he had possession actual or constructive of any share of the disputed property was not entitled to maintain a suit for partition. That the remedy of the plaintiff was by a suit for joint possession and partition and on the plaint in a suit so framed court-fees must be paid *ad-valorem*. That partition is not a substitute for ejectment because partition implies an existing joint possession and enjoyment to be converted into possession in severalty. That although ordinarily in a suit for partition pure and simple the parties have to bear their own costs of the suit up to the stage of the preliminary decree, the plaintiff must in this case pay the costs of the defendants who have successfully contested his claim for partition. LOKE NATH SINGH *v.* DHAKESHWAR PROSAD NARAIN SINGH (1914) **20 C. W. N. 51**

PARTITION—*contd.*

3. ——— *Partition, suit for, if maintainable by a lessee of mining rights for a term against lessor's co-owners—Partition of underground mines and minerals, if possible—Partition Act (IV of 1893), s. 2.* According to the English authorities, it is clear that a lessee for a term of years must maintain a claim for partition. There is no reason for holding that a different rule prevails in India. The authority of *Mukunda Lal Pal Chaudhuri* v. *Lehuraux, I. L. R. 20 Calc. 379*, has been much shaken by the decision of the Full Bench in *Hemadri Nath Khan* v. *Ramani Kanta Roy, I. L. R. 24 Calc. 575, 581: s. c. 1 C. W. N. 406; Heaton* v. *Dearden, 16 Beav. 147, Bhagwat Sahai* v. *Bepin Behari Mitter, I. L. R. 37 Calc. 918: s. c. 14 C. W. N. 962*, and *Baring* v. *Nash, 1 V. & B. 551*, referred to. There may be no special difficulty in effecting a partition of the underground mines and minerals, but in case any such difficulty arises, the power to order a sale under s. 2 of the Partition Act of 1893 may be exercised. LALIT KISHORE MITRA *v.* THAKUR GIRDHARI SINGH (1916) . **20 C. W. N. 1306**

4. ——— *Partition suit—Issue between co-defendants—Previous partition suit instituted by third parties against present defendants and the vendor of the plaintiff—Issue regarding the share of the plaintiff's vendor being subject to other defendants' mokurari raised but expunged—Final decree in the previous partition suit passed on the basis of the makurari interest and allocation made thereunder—Bar of res judicata to present suit—Explanation IV of s. 11, Civil Procedure Code (Act V of 1908).* In a previous partition suit instituted by *Y* against the present plaintiff's vendor *T* and the present defendants, an issue was raised as to the share of *T* being subject to the *mokurari* interest of the other defendants but was expunged by the order of the Court. But when the partition was actually carried into effect the present defendants were allotted possession not only of their proprietory share but also the *mokurari* of the share which they claimed to hold under the daughter of *T*. In a subsequent partition suit instituted by the vendees of *T* against the defendants for a declaration that *T*'s share was not subject to any *mokurari* and for allotting to the plaintiffs a separate *takhta* out of the *takhta* which was allotted to the defendants in the previous suit: *Held*, that the question was not expressly decided in the previous suit and it was impossible to hold that a decision might and ought to have been obtained in the previous partition suit by *T* or the present plaintiffs, and that the defendants failed to make out that the plaintiffs were barred by the rule of *res judicata*. LATIF HUSSAIN *v.* BASDEO SINGH (1916) **20 C. W. N. 1177**

5. ——— *Partition suit—Preliminary decree, appeal preferred against, after final decree passed, if lies.* Where a preliminary decree for partition passed by a Munsif who affirmed by the Subordinate Judge, and a second appeal therefrom was not filed until after the

PARTITION—*concld.*

first Court had passed the final decree for partition, and no appeal was preferred against this latter decree: *Held*, that the preliminary decree having been affirmed by the final decree and the final decree itself not being the subject of any appeal, no second appeal lay against the preliminary decree. *Khirodamoyi Dasi* v. *Adhar Chandra Ghose, 18 C. L. J. 321*, followed. *Ram Nath Singh* v. *Basanta Narain Singh, 17 C. W. N. 868*, distinguished. SADHU CHARAN DUTTA *v.* HARANATH DUTTA (1914) . . . **20 C. W. N. 231**

6. ——— *Partition suit—Preliminary decree, appeal against—Final decree passed pending the appeal against preliminary decree—No appeal filed against final decree—Whether appeal against preliminary decree can proceed.* Where in a partition suit a preliminary decree was passed on 29th May 1913 and an appeal was filed against it on 3rd July 1913, but a final decree was passed on 27th September 1913 despite the objection of the appellant that the final decree should not be passed until the appeal has been disposed of, and no appeal was filed against the final decree, and the hearing of the appeal against the preliminary decree was objected to on the ground that the appeal could not proceed inasmuch as a final decree had been passed in the case and no appeal had been preferred against that decree: *Held*, on a review of authorities, that the preliminary objection should be overruled. The appeal could be heard although a final decree had been passed in the case and no appeal had been filed against that decree. *Kanahiya Lal* v. *Tirbeni Sahai, I. L. R. 36 All. 532, Ram Nath Singh* v. *Basanta Narain Singh, 17 C. W. N. 868: s. c. 18 C. L. J. 209, Nistarini Debi* v. *Rai Mohan Biswas, 18 C. L. J. 214, Abdul Jalil* v. *Amar Chand Paul, 18 C. L. J. 223, Atul Chandra Singha* v. *Kunja Behari Singha, 22 C. L. J. 90*, and *Lakshmi* v. *Maru Devi, I. L. R. 37 Mad. 29*, followed. *Khirodamoyi Dasi* v. *Adhar Chandra Ghose, 18 C. L. J. 321, Sadhu Charan Dutta* v *Hara Nath Dutta, 27 I. C. 135, Bulwant Singh Ram Chandra* v. *Sakharam Mancharam, 33 I. C. 137*, and *Dattatraya Ramchandra Savale* v. *Ajmuddin Fakruddin, 33 I. C. 146*, were distinguishable because in those cases the final decree had been passed before the appeal against the preliminary decree was filed. *Per* SHARFUDDIN, J. A preliminary decree in a partition suit has existence independent of the final decree and the final decree really is dependent upon and subordinate to the preliminary decree, and instead of extinguishing a preliminary decree gives effect to it. CHAMIER, *C. J.* A defendant cannot resist partition of a *mehal* on the ground that by an agreement the members of the family agreed to keep it *ijmali* when the defendant claimed partition of it in a previous suit and succeeded in effecting partition. WAHIDUNNISA *v.* DEEP NARAIN PRASAD (1916) . . . **20 C. W. N. 1174**

PARTITION BY COLLECTOR.

See JOINT ESTATE.

I. L. R. 43 Calc. 103

PARTITION DEED.

See STAMP ACT (II OF 1899), SCH. I, ART. 55 . **I. L. R. 38 All. 56**

PARTNERSHIP.

——— **agreement to enter into—**

See CONTRACT ACT (IX OF 1872), S. 23. **I. L. R. 40 Bom. 64**

1. ——— *Contract Act (IX of 1872), s. 180—Bailor and bailee—Either may maintain an action against a wrong-doer—What constitutes partnership—Partner entitled to purchase partnership property—Action for settled account.* A partnership is constituted whenever the parties have agreed to carry on business or to share the profits in some way in common. *Mollwo, March* v. *Court of Wards, 10 B. L. R. 312, Pooley* v. *Driver, 5 Ch. D. 458*, referred to. A partner is entitled to purchase partnership property provided there is full disclosure and the parties are at arm's length. It is only where the real truth is concealed and the facts are not disclosed that one partner has legitimate grievance against another. *Dunne* v. *English, L. R. 18 Eq. 524, Imperial Mercantile Credit Association* v. *Coleman, L. R. 6 H. L. 189*, referred to. An action for the balance of a settled account would not be restrained merely because they were other unsettled accounts between the parties. *Rawson* v. *Samuel, (1839) Cr. & Ph. 161, Preston* v. *Strutton, 1 Anst. 50*, referred to. S. 180 of the Contract Act provides that if a third person deprives the bailee of the use or possession of the goods bailed or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case, if no bailment had been made, and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury. *Giles* v. *Grover, 6 Bligh N. S. 277; Jefferies* v. *G. W. Railway Co., 5 El. & Bl. 802; Manders* v. *Williams, 4 Exch. 339*, referred to. RAMNATH GAGOI *v.* PITAMBAR DEB GOSWAMI (1915) . . . **I. L. R. 43 Calc. 733**

2. ——— *Partner, if entitled to interest on advance made.* The appellant and the respondent were partners who agreed to contribute an equal amount of capital but in fact the appellant contributed a much larger amount than the respondent: *Held* (in a suit for dissolution of partnership and adjustment of accounts), that, upon the general rule that interest between partners is not allowed unless there is express stipulation or a particular course of dealing between the parties as shown by the partnership books or a trade custom to the contrary, has been engrafted an important qualification, namely, that an advance by a partner to the firm is treated not as an increase of its capital but rather as a loan on which interest should be paid and that subject to any agreement between the parties interest is payable on money paid or advanced by one partner for partnership purposes beyond the amount of capital which he had agreed to subscribe. That the respondent who claimed the

PARTNERSHIP—*concld.*

benefit of the profits which accrued from the sums advanced to the partnership business by the defendant was bound in justice to make an allowance for interest on those sums to the partner. GOBINDA CHANDRA BASAK *v.* HARIDAS BASAK (1915) . . . . **20 C. W. N. 634**

PARTNERSHIP PROPERTY.

See PARTNERSHIP . **I. L. R. 43 Calc. 733**

PATNA HIGH COURT.

——— *Calcutta High Court, decision of, binding upon Patna High Court, until dissented from by Full Bench.* The decision by a Divisional Bench of the Calcutta High Court is binding upon the Patna High Court until dissented from by a Full Bench. HARIHAR MISSER *v.* SYED MOHAMED (1916) . **20 C. W. N. 983**

PATNI TENURE.

——— **purchaser of—**

See INCUMBRANCE **I. L. R. 43 Calc. 558**

PAUPER PLAINT.

See STAMP DUTY. **I. L. R. 38 All. 469**

PAYMENT.

——— **to some only of the Trustees—**

See TRUST . **I. L. R. 39 Mad. 597**

——— **under compulsion of law—**

See DEPOSIT IN COURT.
I. L. R. 43 Calc. 269

PENAL CODE (ACT XLV OF 1860)—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 195.
I. L. R. 39 Mad. 677

——— **s. s. 23, 24, 463 to 465—**

See FORGERY . **I. L. R. 43 Calc. 421**

——— **ss. 30, 467**—"*Valuable security*" —*Forgery—Incomplete documents bearing forged signature of executant.* Two documents were found in the possession of the accused each bearing a signature which purported to be that of one Bindhyachal, but which in fact was a forged signature. One document was intended to be filled up as a promissory note, the other as a receipt, but the spaces for particulars of the amount, the name of the person in whose favour the document was executed, the date and place of execution and the rate of interest were not filled in; a one-anna stamp was affixed to each but it was not cancelled in any way: *Held*, that these documents, nevertheless, purported to be valuable securities within the meaning of the definition contained in s. 30 of the Indian Penal Code. *Queen Empress* v. *Ramasami, I. L. R. 12 Mad. 49*, referred to. EMPEROR *v.* JAWAHIR THAKUR (1916).
I. L. R. 38 All. 430

——— **ss. 100, 325**—*Grievous hurt—Private defence—Plea cannot be set up in cases of deliberate fight.* The right of private defence cannot be successfully invoked by men who voluntarily and deliberately engage in fighting with their enemies for the sake of fighting, as opposed to the case where men are reluctantly forced to use violence in order to protect themselves from violence offered to them. EMPEROR *v.* BECHUR ANOP (1915) . . . **I. L. R. 40 Bom. 105**

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— **s. 100**—*concld.*

——— **ss. 109, 120B, 420**—*Abetment by conspiracy—Indian Evidence Act (I of 1872), s. 10.* The accused *M* was a loader of the E. I. Railway Company. The case for the prosecution was that when making out the weights in the consignment notes he entered a weight less than the actual with the result that the railway company received a sum less than they were entitled to and the other accused who were a firm of merchants paid, as consignees of goods, illegal gratification to *M* for this fraudulent work. It appeared that the name of *M* signed by himself appeared in one of the note books of the firm of *D* and *J* and the *jama-kharach* of the firm showed the payment of certain sums to accused *M*. The accused were tried and convicted by the Deputy Magistrate under ss. 120B, 420, 420/109, 161, 161/109, Indian Penal Code, but the Sessions Judge in appeal being of opinion that the conviction under s. 120B could not stand on the ground that the offences were committed before that section came into force, took into consideration only the direct evidence against *M* of making the endorsement of false weight and finding this to be insufficient acquitted all the accused: *Held*, that the Sessions Judge rightly held that the conviction under s. 120B, Indian Penal Code, could not stand by reason of the fact that the offences were committed before that section came into force, but he entirely omitted to notice that this was immaterial as the law of abetment includes abetment by conspiracy which was distinctly charged before the Magistrate under s. 420/109, Indian Penal Code. That being so the circumstantial evidence of conspiracy to defraud the railway company was to be considered. That under s. 10 of the Evidence Act the note books and *jama-kharach* of the firm of *D* and *J* could be used as evidence of abetment by conspiracy against *M*. KING-EMPEROR *v.* MANMOHAN ROY (1915) . **20 C. W. N. 292**

——— **s. 143, conviction under—**

See SECURITY TO KEEP THE PEACE.
I. L. R. 43 Calc. 671

——— **s. 147**—*Rioting*—There may be an unlawful assembly and riot in respect of a right which the rioters desire to enforce. DEPUTY LEGAL REMEMBRANCER, BIHAR AND ORISSA *v.* MATUKDHARI SINGH (1915) . **20 C. W. N. 128**

——— **ss. 147, 426, 447**—*Obstruction to public way by building a wall—Pulling down the wall in bonâ fide exercise of the right of public way, no offence.* The complainant built a wall obstructing

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— **s. 147**—*concld.*

a public way. Immediately after this, the accused, who were members of the public, in the *bonâ fide* exercise of their right of way, pulled down the wall: *Held*, that the accused were not guilty either of rioting, or of mischief, or of criminal trespass (ss. 147, 426 and 447 of the Penal Code). *Re* DHARMALINGA MUDALY (1914)

I. L. R. 39 Mad. 57

——— **s. 153A**—

See SECURITY FOR GOOD BEHAVIOUR.

I. L. R. 43 Calc. 591

——— **s. 186**—*Obstructing a public servant in the discharge of his public functions—Local inspection by Munsif—Water-ways.* In a suit in which a public right of way was claimed there was a dispute not only as to whether the public right of way claimed existed but also as to whether there were not certain other public ways the existence of which would discredit the plaintiffs' allegations in the suit. The Munsif trying the case went to the spot to hold a local inspection; he wanted to pass in a boat along a water-way but was not allowed to do so by the petitioners who claimed it as their private property. It was found that it was a water-way used at least by the people of a particular locality. None of the petitioners were parties to the suit pending before the Munsif in which the local inspection was held. The petitioners were convicted under s. 186, Indian Penal Code. *Held*, that no offence under s. 186, Indian Penal Code, was committed. NISHI KANTO PAL *v.* EMPEROR (1916).

20 C. W. N. 857

——— **s. 188**—

1. ——— "*Promulgated*," *meaning of—Injunction, disobedience to—No offence under Penal Code.* The word "promulgated" under s. 188 of the Penal Code refers to orders issued under the Code of Criminal Procedure and not to judgments and orders of Civil Courts. MAMMALI *v.* KUTTI AMMU (1915)

I. L. R. 39 Mad. 543

2. ——— *Prohibition order under s. 144, Criminal Procedure Code, passed without any evidence—Prosecution for disobedience of order not properly passed—Cognizance of case under s. 188 by the same Magistrate who passed the order disobeyed.* A servant of the first party filed a petition before the Sub-divisional Magistrate complaining that the second party were about to construct a drain and if the first party opposed them there was a likelihood of a breach of the peace, whereupon the Magistrate without taking any evidence issued an injunction under s. 144, Criminal Procedure Code, against the second party. On the next day on the complaint of the same man the Magistrate summoned the second party under s. 188, Indian Penal Code. Subsequently he transferred the case to a Magistrate with second class powers and again withdrew it from his file and sent it to the Additional District Magistrate: *Held*, that the proceedings were

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— **s. 188**—*concld.*

wholly irregular. That the order under s. 144, Criminal Procedure Code, should never have been made. That in summoning the second party under s. 188, Indian Penal Code, the Sub-divisional Magistrate was taking cognizance of the offence under s. 188, Indian Penal Code, which he had no power to do. Either action by the Magistrate under s. 476, Criminal Procedure Code, or an application for sanction under s. 195, Criminal Procedure Code, was necessary. The High Court quashed the proceedings under s. 188, Indian Penal Code, and also set aside the order under s. 144, Criminal Procedure Code, which was the foundation of those proceedings although that order had expired. CHANDRA KANTO KANJILAL *v.* KING-EMPEROR (1916) . **20 C. W. N. 981**

——— **ss. 197, 198**—*Issuing or signing a false certificate—"Certificate," meaning of—Civil Procedure Code (Act V of 1908), O. XXI, r. 2—Petition in Court stating satisfaction of decree, if a certificate within the meaning of the sections.* The two petitioners were convicted under ss. 197 and 198 and ss. 197/109 and 198/109 respectively, the charge being that one of the petitioners purporting to represent the decree-holder in a certain suit signed and filed a petition in the Court of the Subordinate Judge stating contrary to fact, that the other petitioner who was the judgment-debtor had paid off the decretal amount to the decree-holder through him, her Ammuktear: *Held*, that the petition in question filed before the Subordinate Judge was not a certificate within the purview of ss. 197 and 198, Indian Penal Code, neither of the requirements of a "certificate" within the meaning of the sections being satisfied in the case. That there is no provision of law which requires a decree-holder or his agent to give or sign a certificate of payment or adjustment, nor is there any provision of law which makes the statement of the decree-holder or his agent as to payment or satisfaction admissible in evidence as such certificate, that is, without further proof. That the word "certificate" may be used as synonymous with certification but that is clearly not its meaning in ss. 197 and 198 of the Penal Code. MAHABIR THAKUR *v.* KING-EMPEROR (1916).

20 C. W. N. 520

——— **ss. 201, 302**—*Murder—Causing evidence of murder to disappear—Property of alternative indictments—Principal and accessory after the fact—Principal, if can be convicted under s. 201.* The accused were committed to the Court of Sessions under ss. 302 and 201, Indian Penal Code. In that Court the charge under s. 201, Indian Penal Code, was first investigated, the other charge being postponed for future consideration. The Sessions Judge found that the accused had a sufficient motive for committing murder, that they disposed of the body of the deceased and were loitering near his house at the exact hour of murder. On these facts the accused were convicted under s. 201, Indian Penal Code: *Held*, that s. 201, Indian Penal Code, is an attempt to

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— **s. 201**—*concld.*

define the position known in England as that of an accessory after the fact. It is settled law that a principal cannot be convicted as an accessory. Where it is impossible to say definitely however strongly it might be suspected, that an accused was guilty of murder, mere suspicion is no bar to a conviction under s. 201. But if it be accepted as a proved fact that the accused before the Court disposed of a dead body and if the acceptance of that fact completes the chain of circumstantial evidence which proves beyond doubt that the accused were actual principals present at the murder and taking part in the murder, they cannot be convicted of the minor offence of causing evidence of the murder to disappear even though by an error of the Judge or by a misconception of the position by the Public Prosecutor the charge of murder is subsequently withdrawn. That on the facts found the accused were principals and the conviction under s. 201 could not stand., *Per* CHAPMAN *J.* It is unsatisfactory to have an alternative indictment one count charging the accused as principal and the other as accessory after the fact. *Queen Empress* v. *Limbya, unreported Criminal Case, Bom. H. C. 1895 at page 799,* and *Torap Ali* v. *Queen-Empress, I. L. R. 22 Calc. 638,* relied on. SUMANTA DHUPI *v.* KING-EMPEROR (1915).
20 C. W. N. 166

——— **s. 211**—

See CRIMINAL PROCEDURE CODE, SS. 4 AND 476 . **I. L. R. 38 All. 32**

——— **ss. 224, 225**—

See RESCUE FROM LAWFUL CUSTODY.
I. L. R. 43 Calc. 1161

——— **s. 225B**—*Warrant of arrest—Actual resistance necessary.* In order to constitute an offence under s. 225B of the Indian Penal Code, something more is required than an evasion of arrest or a mere assertion by the person sought to be arrested that he would not like to be arrested or that a fight would be the result of such arrest. There must be positive evidence to show that the officer armed with a warrant of arrest produced the warrant and that the person sought to be arrested resisted such arrest. EMPEROR *v.* AIJAZ HUSAIN (1916) . . **I. L. R. 38 All. 506**

——— **s. 228**—*Intentional insult to an officer sitting judicially—Application for transfer.* An accused person in an application for transfer of the case pending against him made an assertion to the effect that the persons who caused the proceedings to be instituted were on terms of intimacy with the officer trying the case and that therefore he did not expect a fair and impartial trial. *Held,* that there being no intention on the part of the applicant to insult the Court but merely to procure a transfer of his case, he was not guilty of an offence under s. 228 of the Indian Penal Code. *Queen-Empress* v. *Abdulla Khan, 1898, W. N. 145,* followed. EMPEROR *v.* MURLI DHAR (1916) . **I. L. R. 38 All. 284**

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— **ss. 361, 366, 109**—*Kidnapping from lawful guardianship—Completion of offence—Continuous offence—Abetment.* The offence of kidnapping is completed the moment a girl under sixteen years of age is taken out of the custody of her lawful guardian and is not an offence continuing as long as the minor is kept out of such guardianship. There can be no abetment of the offence by conduct which commences only after the minor has once been completely taken out of the keeping of the guardian and the guardian's keeping of the minor is completely at an end. *Regina* v. *Samia Kaundan, I. L. R. 1 Mad. 173, Queen-Empress* v. *Ram Dei, I. L. R. 18 All. 350, Queen-Empress* v. *Ram Sundar, I. L. R. 19 All. 109, Chekutty* v. *Emperor, I. L. R. 26 Mad. 454, Nemai Chattoraj* v *Queen-Empress, I. L. R. 27 Calc. 1041, Chanda* v. *Queen-Empress, (1904) Punj. Rec. Cr. J. 19,* referred to. EMPEROR *v.* ABDUR RAHMAN (1916) . **I. L. R. 38 All. 664**

——— **s. 379**—

See AGRA TENANCY ACT (II OF 1901), S. 124 . **I. L. R. 38 All. 40**

——— *Theft—Elements necessary to constitute offence—Removal of property in assertion of bonâ fide claim of right.* To sustain a conviction under s. 379 it is necessary to prove dishonest intention to take property out of the possession of another person. Consequently when property is removed in the assertion of a *bonâ fide* claim of right the removal does not constitute theft. The claim of right must be an honest one though it may be unfounded in law or in fact. If the claim is not made in good faith but is a mere colourable pretence to obtain or to keep possession, it is of no avail as a defence. ARFAN ALI *v.* KING-EMPEROR (1916).
20 C. W. N. 1270

——— **ss. 409, 477A**—

See CRIMINAL PROCEDURE CODE, SS. 222 (2), 233 . **I. L. R. 38 All. 42**

——— **s. 417**—*Cheating, complaint of—Proceeding quashed as primâ facie case not made out—Pleader's promise to persuade client to give undertaking—Undertaking not given—Pleader, if may be proceeded against for cheating.* In a proceeding under s. 107, Criminal Procedure Code, the opposite party undertook not to go to the property, the subject-matter in dispute, or to do any act that was likely to involve a breach of the peace, on the pleader for the complainant agreeing to persuade complainant's master to file an undertaking that he would protect the property from sale. The undertaking which the latter offered to file, not having been approved of by the opposite party, was not filed, whereupon the opposite party started proceedings against the pleader under s. 417 of the Penal Code: *Held,* that the proceedings should be quashed as no *primâ facie* case of cheating had been made out. NRISHINGA KUMAR MUKERJI *v.* KUMUDENDU MUKERJI (1916).
20 C. W. N. 1112

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— **s. 430**—*Mischief by injury to works of irrigation.* There cannot be a conviction under s. 430 of the Penal Code, where there is a right or a *bonâ fide* claim of right. DEPUTY LEGAL REMEMBRANCER, BIHAR AND ORISSA *v.* MATUKDHARI SING (1915) . **20 C. W. N. 128**

——— **s. 436**—*Arson—Evidence of previous fires, unconnected with the charge under enquiry—Conviction on inadmissible evidence.* The accused was convicted of arson. During the trial, the Sessions Judge admitted the evidence of previous fires in the locality with which, however, there was nothing to connect the accused and relying amongst others on that evidence convicted the accused: *Held*, that the Sessions Judge was wrong in admitting the evidence in question. The High Court set aside the conviction and sentence. ABDUL KADIR *v.* KING-EMPEROR (1916). **20 C. W. N. 1267**

——— **ss. 441, 447**—

See CRIMINAL TRESPASS.
I. L. R. 43 Calc. 1143

——— **s. 456**—*Lurking house trespass—Entering a house with intent to have illicit intercourse with a widow of full age, no offence.* An accused person, though he may have known that, if discovered, his act would be likely to cause annoyance to the owner of a house, cannot be said to have intended either actually or constructively to cause such annoyance. Where, therefore, it was proved that a person entered a house with intent to have illicit intercourse with a woman who was a widow and of age: *Held*, that he was guilty of no offence. *Jiwan Singh* v. *King-Emperor, 1908 Punj. Rec. Cr. J. 54*, dissented from. *Emperor* v. *Mulla, I. L. R. 37 All. 395*, referred to. *Queen-Empress* v. *Rayapadayachi, I. L. R. 19 Mad. 240*, followed. EMPEROR *v.* GAYA BHAR (1916) . **I. L. R. 38 All. 517**

——— **ss. 456, 457**—*Criminal Procedure Code, s. 238—Conviction under s. 456 when charged under s. 457, propriety of—Criminal intention if should be specified in the charge in a case under s. 546—Intention of accused, how may be determined by Court.* The view that under no circumstances can a conviction be made under s. 456 of the Penal Code, when the accused has been charged with the commission of an offence under s. 457, cannot be maintained. The accused in the middle of the night entered the house of the complainant while she was asleep, was caught but ultimately ran away. The motive alleged by the prosecution was to commit theft of the complainant's ornaments. The accused was summarily tried for offences under ss. 457 and 380 of the Penal Code, and the trying Magistrate finding that the intention of the accused was really to make immoral proposals to the complainant and thus to annoy her, convicted him under s. 456 of the Penal Code: *Held*, that although the specific intent, namely, the intent to commit theft was not established, yet it was competent to the Court to convict the accused under s. 456 of the Penal

PENAL CODE (ACT XLV OF 1860)—*concld.*

——— **ss. 456, 457**—*concld.*

Code, s. 238, Criminal Procedure Code, being clearly applicable to a case of this character, and the accused not having in any way been prejudiced by such conviction. *Jharu Sheikh* v. *King-Emperor, 16 C. W. N. 696*, distinguished. That it is well settled that to sustain a conviction under s. 456 it is not necessary to specify the criminal intention in the charge; it is sufficient if a guilty intention is proved such as is contemplated by s. 441 of the Penal Code. That the intention may be determined as well from direct evidence as from the conduct of the party concerned and the attendant circumstances and in the circumstances of the case the Court could presume that the accused effected the entry with an intent such as is provided for by s. 441 of the Penal Code.. KARALI PROSAD *v.* KING-EMPEROR (1916)
20 C. W. N. 1075

——— **ss. 466, 471**—

See FORGERY . **I. L. R. 43 Calc. 783**

——— **ss. 467, 109, 471**—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 403.
I. L. R. 40 Bom. 97

——— **s. 498**—*Criminal Procedure Code, ss. 4, 199, 238 (3)—Complaint—Statement made in Court as witness.* Where in a proceeding instituted by the police under s. 366 of the Indian Penal Code, the husband of the woman appeared as a witness and asked the Magistrate trying the case to drop the proceedings under s. 366 as he intended to prosecute the accused under s. 498 of the said Code: *Held*, that the statement made by the husband, as a witness, fell within the definition of complaint as defined in s. 4, cl. (*h*) of the Code of Criminal Procedure and therefore a conviction under s. 498, treating the statement made by the husband as a complaint, was legal. *In the matter of Ujjala Bewa, 1 C. L. R. 523, Queen-Empress* v. *Kangla, I. L. R. 23 All. 72*, referred to.. EMPEROR *v.* BHAWANI DAT (1916).
I. L. R. 38 All. 276

PENAL PROVISIONS.

——— **construction of**—

See TENANTS-IN-COMMON.
I. L. R. 39 Mad. 1049

PENALTY.

See CONTRACT ACT (IX OF 1872), S. 74.
I. L. R. 38 All. 52

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 83 . **I. L. R. 39 Mad. 579**

——— *Court Fees Act (VII of 1870) s. 19 E—Scope of the section—Suit to recover penalty by Secretary of State, maintainability of—Decision of Revenue authority—Jurisdiction of Civil Court.* Unless there is a statutory bar, a suit is maintainable by the Secretary of State for India in Council for recovery of a penalty lawfully imposed. A Civil Court has no juris-

PENALTY—*concld.*

diction to review the decision of a Revenue authority on the ground that the valuation had been incorrectly made or that the discretion in the imposition of the penalty had been erroneously exercised. But the position is different when the order for imposition of penalty is assailed on the ground that it has not been made in accordance with the statute. If the action of the Revenue authority is *ultra vires*, if he has not followed the procedure described by the statute which is the source of his authority, there is no enforceable claim which a Civil Court is bound to recognize. *Manekji* v. *Secretary of State for India*, *(1896) Bom. P. J. 529*, followed. S. 19E of the Court Fees Act, 1870, contemplates an application on the part of the person who has taken out probate and produces the same to be duly stamped. It further contemplates that the estimated value of the estate is less than what the value has afterwards proved to be. *A.-G.* v. *Freer*, *11 Price 183*, *Bradlaugh* v. *Clarke*, *L. R. 8 A. C. 354*, *Cawthorne* v. *Campbell*, *1 Anst. 214*, *In the goods of Omda Bibee*, *I. L. R. 26 Calc. 407*, *In the goods of Stevenson*, *6 C. W. N. 898*, referred to. NIKUNJA RANI CHOWDHURANI *v.* SECRETARY OF STATE FOR INDIA (1915) . . **I. L. R. 43 Calc. 230**

PERJURY.

——— *Power of High Court to direct prosecution when false evidence given before the Committing Magistrate in the Mofussil—Nearest first class Magistrate—Presidency Magistrate—Criminal Procedure Code (Act V of 1898), s. 476—Practice.* Where a witness examined during the trial of a prisoner at the Original Criminal Sessions of the High Court has intentionally made false statements before the committing officer at *B* in the district of Alipore, the High Court has jurisdiction, under s. 476 of the Criminal Procedure Code, to send the case of the witness for inquiry or trial to the District Magistrate of Alipore as the nearest Magistrate of the first class. *Kedar Nath Kar* v. *King-Emperor*, *3 C. L. J. 357*, *Emperor* v. *Tripura Shankar Sarkar*, *I. L. R. 37 Calc. 618*, distinguished. EMPEROR *v.* DONALDSON (1916). **I. L. R. 43 Calc. 542**

PERMANENT LEASE.

See HINDU LAW—PARTITION. **I. L. R. 43 Calc. 1118**

See LIMITATION . **I. L. R. 43 Calc. 34**

PERPETUITIES.

——— **rule of—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 54 . **I. L. R. 39 Mad. 462**

PERPETUITY OF TENURE.

See LEASE . **I. L. R. 43 Calc. 332**

PERSONAL INAM.

See MADRAS FOREST ACT (XXI OF 1882), SS. 6, 10, 16, 17. **I. L. R. 39 Mad. 494**

PLAINT.

——— **amendment of—**

See APPEAL . **I. L. R. 43 Calc. 95**

See REMAND . **I. L. R. 43 Calc. 938**

——— *Form of plaint—Suit against Corporations—Defendant, misdescription of—Service on Corporations—Civil Procedure Code (Act V of 1908), O. XXIX, rr. 1 and 2—Practice.* In a plaint filed against two companies, the defendant companies were described as "the India General Steam Navigation and Railway Company, Limited, and the Rivers Steam Navigation Company, Limited, by their joint agent A. E. Rogers" and notice was served on Mr. Rogers. Subsequently Mr. Rogers retired from the service of companies and left the country. At the trial of this suit the plaint was amended and Mr. Rogers' name was omitted from the title of the suit which was proceeded with against the two companies. *Held*, that the plaint as originally framed was in contravention of O. XXIX, r. 1 of the Code of Civil Procedure. *Ram Das Sein* v. *Stephenson*, *10 W. R. 366*, *Nubeen Chunder Paul* v. *Stephenson*, *15 W. R. 534*, and *Campbell* v. *Jackson*, *I. L. R. 12 Calc. 41*, referred to. *Held*, also, that the amendment might stand, but the plaintiffs were bound to serve notices of the suit in the manner provided in O. XXIX, r. 2, after the amendment had been made and the suit properly constituted. INDIA GENERAL STEAM NAVIGATION AND RAILWAY COMPANY, LD. *v.* LAL MOHAN SAHA (1915). **I. L. R. 43 Calc. 441**

PLAINTIFF.

——— **substitution of—**

See LIMITATION . **L. R. 43 I. A. 113**

PLEADER.

See UNPROFESSIONAL CONDUCT.

——— **as litigant—**

See UNPROFESSIONAL CONDUCT. **I. L. R. 43 Calc. 685**

——— **contempt of Court, by—**

See LEGAL PRACTITIONERS ACT (XVIII OF 1879), S. 14. **I. L. R. 39 Mad. 1045**

PLEADING AND PROOF.

——— *Pleading and proof, variance between, when fatal to suit—Variance not affecting cardinal points in issue—Nature of the principle—Question one of circumstances rather than of law—Application of the principle in an abstract way leading to error of decision on the merits—Trial Judge's appreciation of witnesses examined in his presence, value of.* When a sum of money due by *A* to *B* was entered in *B's* account-book as having been paid on 5th November 1907 in cash, but *B's* case was that it was liquidated by a promissory note which however bore date the 7th November 1907; and whilst *A* alleged that the payment was in fact made on 5th November in cash and the note of 7th November was a forgery, *B* and his witnesses throughout the trial

PLEADING AND PROOF—*concld.*

insisted that the date of the transaction was the 7th and the note was signed then, but the evidence and circumstances of the case showed that there was no payment in cash and that the promissory note was genuine, but had been executed not on the 7th but on the 5th—the entry in the account-book to the effect that the payment was in cash being satisfactorily explained by the practice of entering payments by promissory notes as payments in "cash": *Held*, that the variance of the case established from the case pleaded in the plaint (as to the date of the note), was not fatal to *B's* suit to enforce the promissory note, in which the cardinal points to be decided were whether the debt had been paid in cash and whether the note was a forgery. That the High Court in relying for the dismissal of the suit on, amongst other grounds, that of variance between pleading and proof had applied that principle in an abstract and unsatisfactory way which had misled them in estimating the merits of the case. That the question, in ultimate analysis, was one of circumstances and not of law. That the evidence adduced in support of the transaction having been effected on the 7th November was not necessarily perjured or fabricated when it appeared that the statements of witnesses and entries in account-books might be due to *bonâ fide* mistake. ABDUL RAHIMAN *v.* GUSTADJI MUNCHERJI COOPER (1915).

20 C. W. N. 297

PLEADINGS.

See SPECIFIC MOVABLE PROPERTY.

I. L. R. 39 Mad. 1

1. ——— *Defendant admitting plaintiff's title in written statement, though claim notified before suit—Suit if may be dismissed for want of cause of action.* The fact that the defendant does not in his written statement deny the plaintiff's title to land of which plaintiff had sued for recovery does not show that the plaintiff had no cause of action. Where, therefore, it appeared that the defendant did not at any time before the institution of the suit admit the plaintiff's title to the lands in suit, although plaintiff served him with notice of his claim: *Held*, that this Court was not justified in dismissing the suit on the ground of want of cause of action, merely because the defendant in his written statement admitted plaintiff's title. GANGADAS SIL *v.* THE SECRETARY OF STATE FOR INDIA (1916).

20 C. W. N. 636

2. ——— *Plaint, what should state—Omission to state facts necessary for defendants to meet at the trial, effect of—Reliance by plaintiff on inconsistent rights alternately—Plaintiff, if can allege facts destructive of each other—Partition suit—Preliminary decree—Costs.* The plaintiff commenced an action for partition on the allegation that he was entitled to fourteen and a half annas share of the property in suit while the defendants contended that they had acquired a good title to a two annas share. The plaint did not narrate the history of the title of the plaintiff nor did it mention the deeds whereby the title had devolved

PLEADINGS—*concld.*

on him. The plaintiff did not make a definite case in plaint but sought at the trial to develop two inconsistent cases on the testimony of two different sets of witnesses. Objection was taken by the defendants on the ground of defect in the plaint but the Subordinate Judge proceeded with the trial. He found in favour of the defendants and allowed them the full amount of costs on the value of the suit. Against the preliminary decree the plaintiff appealed. *Held*, that in the plaint the plaintiff was bound to state the nature of the deeds on which he relied in deducing his title from the person under whom he claimed and to show the devolution of the estate to himself. *Philipps* v. *Philipps, 4 Q. B. D. 127, Derbyshire* v. *Leigh*, [*1896*] *1 Q. B. 554*, and *Davis* v. *James, 26 Ch. D. 778.* It is absolutely essential that the pleading not to be embarrassing to the defendants, should state those facts which will put the defendants on their guard and tell them what they will have to meet when the case comes on for trial. This much the plaintiff is bound to do though he need not set out the evidence whereby he proposes to prove the facts which give him the title. *Williams* v. *Wilcox, 8 A. & E. 331*, and *Gautret* v. *Egerton, L. R. 2 C. P 371.* A plaintiff may in certain circumstances rely upon several different rights alternately though they may be inconsistent. *Narendra Nath* v. *Abhoy Churn, I. L. R. 34 Calc. 51 : s. c. 11 C. W. N. 20 ; 4. C. L. J. 437, Phillips* v. *Phillips, 4. Q. B. D. 127, Berdan* v. *Greenwood, 3 Ex. D. 255, Hawkesley* v. *Bradshaw, 5 Q. B. D. 303*, and *In re Morgan, 34 Ch. D. 496.* But the plaintiff cannot be permitted to allege two absolutely inconsistent state of facts each of which is destructive of the other. *Mahamud Bux* v. *Hossein Bibi, I. L. R. 15 Calc. 683.* That in the present case the plaintiff should not have been allowed to proceed on the plaint as framed but should have been called upon to specify in his statement of claim the nature of the deeds and transactions from which he deduced his title. That the order for costs on the full value of the suit could not properly be made at the stage of the preliminary enquiry when the matter in controversy related only to a half anna share in the property. MOTILAL PODDAR *v.* JUDHISTIR DAS TEOR (1915) . . . **20 C. W. N. 310**

PLEDGE.

See SALE OF GOODS . **L. R. 43 I. A. 164**

POLICE.

——— **report to—**

See BAILABLE OFFENCE.

I. L. R. 39 Mad. 1006

POLICE ACT (V OF 1861).

——— **ss. 17, 19—**

See SPECIAL CONSTABLES.

I. L. R. 43 Calc. 277

POLICE PATIL.

——— **arresting the accused—**

See PRACTICE . **I. L. R. 40. Bom. 220**

POLICE REPORT.

See FALSE INFORMATION.
I. L. R. 43 Calc. 173

See SURETY I. L. R. 43 Calc. 1024

PORAMBOKE.

See MADRAS FOREST ACT (XXI OF 1882), SS. 6, 10, 16, 17.
I. L. R. 39 Mad. 494

POSSESSION.

See LESSOR AND LESSEE.
I. L. R. 39 Mad. 1042

——— suit to recover—

See LIMITATION . I. L. R. 43 Calc. 34

——— transfer of—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 40 . I. L. R. 40 Bom. 498

——— *Possession and title, suit to establish, whether suit for mere declaration—Maintainability—Whether catching fish in a streamlet amounts to dispossession.* Where the plaintiffs in a suit establish their title to a village and also that they have been in possession of it and of a streamlet which lies within it, but that the plaintiff's possession has been disturbed inasmuch as the defendants' people have caught fish in it: *Held*, that under such circumstances the plaintiffs' suit for a mere declaration is maintainable. Even if the defendants are found to have granted the right to catch fish in the streamlet to other persons not parties to the suit, that act would not amount even to disturbance of possession still less to dispossession nor would the fact that some persons have at times caught fish in the streamlet shew that the plaintiffs have been dispossessed. At most the catching of fish in the streamlet would be a disturbance of possession. SAHDEO LAL *v.* BHAGAT *v.* KESHO MOHAN THAKUR (1916).
20 C. W. N. 1274

POWER OF ATTORNEY.

See OATHS ACT (X OF 1873), SS. 8, 9, 10.
I. L. R. 38 All. 131

See PRINCIPAL AND AGENT.
I. L. R. 43 Calc. 527

PRACTICE.

See APPEAL . I. L. R. 43 Calc. 833

See ATTORNEY'S LIEN FOR COSTS.
I. L. R. 43 Calc. 932

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92 . I. L. R. 4 Bom. 439

See CIVIL PROCEDURE CODE (1908), O. XLVIII, R. 9.
I. L. R. 38 All. 280

See CONSOLIDATION OF APPEAL.
I. L. R. 43 Calc. 95

See COSTS . I. L. R. 43 Calc. 190

See CRIMINAL PROCEDURE CODE, S. 476.
I. L. R. 38 All. 695

PRACTICE—*contd.*

See CRIMINAL REVISION.
I. L. R. 43 Calc. 1029

See DIVORCE ACT (IV OF 1869), S. 37.
I. L. R. 38 All. 688

See EX PARTE DECREE.
I. L. R. 43 Calc. 1001

See INSOLVENCY.
I. L. R. 43 Calc. 243

See JOINDER OF CASES.
I. L. R. 43 Calc. 13
I. L. R. 38 All. 457

See JOINT ESTATE.
I. L. R. 43 Calc. 103

See LAND ACQUISITION.
I. L. R. 43 Calc. 665

See LEGAL PRACTITIONER'S ACT (XVIII OF 1879), S. 14.
I. L. R. 38 All. 182

See PERJURY . I. L. R. 43 Calc. 542

See PLAINT . I. L. R. 43 Calc. 441

See RECORDS, POWER TO CALL FOR.
I. L. R. 43 Calc. 239

See REVIVOR . I. L. R. 43 Calc. 903

See SOLICITOR'S LIEN FOR COSTS.
I. L. R. 43 Calc. 676

See SUMMONS, SERVICE OF.
I. L. R. 43 Calc. 447

See TITLE, SUIT FOR DECLARATION OF.
I. L. R. 38 All. 440

See VAKALATNAMA.
I. L. R. 43 Calc. 884

See VALUATION OF SUIT.
I. L. R. 43 Calc. 225

——— deaf and dumb accused—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 341.
I. L. R. 40 Bom. 598

1. ——— *Execution of decree—Civil Procedure Code (Act V of 1908), O. XXI, r. 41—Judgment-debtor, examination of—Application by judgment-debtor to have order for examination set aside.* An application under O. XXI, r. 41, of the Civil Procedure Code, 1908, made *ex parte* on a verified tabular statement, is in order. The judgment-debtor is entitled to be heard to have such order set aside, but he should apply on summons. The object of O. XXI, r. 41 is to obtain discovery for purposes of execution to avoid unnecessary trouble in obtaining satisfaction of money decrees. Although an order for personal examination is likely to operate harshly and cause unnecessary harassment and obviously ought not to be made unless the Court is satisfied about the *bonâ fides* of the application and its urgent necessity, still such applications may be usefully encouraged to prevent unduly dilatory, troublesome and expensive execution proceedings. *In re Premji Trikumdas, I. L. R. 17 Bom. 514,*

PRACTICE—*concld.*

referred to. NATIONAL BANK OF INDIA, LD. *v.* A. K. GHUZNAVI (1915) . **I. L. R. 43 Calc. 285**

2. ——— ——— ——— *Charge to jury—Misdirection—Omission to direct jury on points telling in accused's favour—High Court—Interference—Statement made by accused before Committing Magistrate—Admissibility—Criminal Procedure Code (Act V of 1898), s. 287—Indian Evidence Act (I of 1872), s. 24—Person in authority—Police Patil arresting the accused.* The High Court will interfere in those cases where it is made to appear that the Sessions Judge has prejudiced the accused by omitting from his charge to the jury points of capital importance telling in accused's favour. The phrase "a person in authority" in s. 24 of the Indian Evidence Act would include the Police Patil who arrests one of the persons accused of the offence. *Quære:* Whether the statement made by an accused before the Committing Magistrate is governed by s. 287 of the Criminal Procedure Code or by s. 24 of the Indian Evidence Act. EMPEROR *v.* FAKIRA APPYA (1915).

I. L. R. 40 Bom. 220

PREAMBLE.

See CONSTRUCTION OF STATUTES.

20 C. W. N. 1158

PRE-EMPTION.

	COL.
1. CUSTOM	317
2. FORMALITIES	317
3. MORTGAGE	318
4. PRICE	319
5. RIGHT OF PRE-EMPTION . . .	319
6. RULE OF PRE-EMPTION . . .	321

1. CUSTOM.

——— ——— ——— *Wajib-ul-arz—Custom—Effect of perfect partition.* The wajib-ul-arz of an undivided village supported a finding that there existed a custom of pre-emption amongst the co-sharers in the village. Subsequently to the framing of this wajib-ul-arz a perfect partition of the village took place: *Held,* that the basis of such a custom was the coparcenary relation and that after partition a co-sharer in one mahal could not claim pre-emption in respect of property sold in another mahal in which the pre-emptor was not a co-sharer. *Dalganjan Singh* v. *Kalika Singh, I. L. R. 22 All. 1,* and *Ganga Singh* v. *Chedi Lal, I. L. R. 33 All. 605,* referred to. MUHAMMAD MAHBUB ALI KHAN *v.* RAGHUBAR DAYAL (1915).

I. L. R. 38 All. 27

2. FORMALITIES.

1. ——— ——— ——— *Mahomedan law—Talab-i-ishtishhad. Held,* that a Mahomedan pre-emptor cannot validly make the *talab-i-ishtishhad* by letter when he is in a position to do so in person. MUHAMMAD KHALIL *v.* MUHAMMAD IBRAHIM (1916) . . **I. L. R. 38 All. 201**

PRE-EMPTION—*contd.*

2. FORMALITIES—*concld.*

2. ——— ——— ——— *Suit by Hindu—Mahomedan law of sale whether applicable—Sale complete, when—Ceremonies necessary before pre-emption, compliance with—S. 37, Act XII of 1887. Per* MULLICK, *J.* There being special custom pleaded a case where pre-emption is claimed by a Hindu must be tried on the principles of justice equity and good conscience under s. 37, Act XII of 1887. As a sale is not complete till legal ownership passes no matter whether there has been payment and delivery the pre-emptor's title in the case of a property worth more than Rs. 100 does not accrue till after registration. It would be against equity, justice and good conscience to apply in such a case the Mahomedan law of sale which is no longer in force and to attach to a mere contract for sale an incident which the Mahomedan lawyers intended to attach only to an actual sale. The performance of the two formalities *talabi mawasibat* and *talabi ishtishad* can be combined but it is essential that the *talabi ishtishad* should refer expressly to the *talabi mawasibat* as having been duly made. *Najmunnessa* v. *Ajaib Ali Khan, I. L. R. 22 All. 343, Janki* v. *Girjadat, I. L. R. 7 All. 482, Begum* v. *Muhammad Yakub, I. L. R. 16 All. 344, Jadu Lal Sahu* v. *Janki Koer, I. L. R. 35 Calc. 575,* and *Budhai Sardar* v. *Sonaullah Mirdha, 19 C. L. J. 604; s. c. 18 C. W. N. 890,* referred to ROE, J.—The test to apply in these cases is, was the sale, in the eyes of the contracting parties and the pre-emptor, complete. If it was, it was not necessary for the pre-emptor to wait till registration before performing the ceremony of *mawasibat.* KHEYALI PROSAD *v.* NAZARUL ALUM (1916).

20 C. W. N. 1048

3. MORTGAGE.

1. ——— ——— ——— *Mortgage of property prior to the passing of Act No. IV of 1882—Government revenue paid by mortgagee—Liability of pre-emptor to pay the amount of the revenue as a condition precedent to obtaining possession of property.* Under a mortgage-deed the mortgagor was liable to pay the Government revenue, and if he failed to do so, the mortgagee was to pay it and was entitled to recover the sum from the mortgagor and his other property. The mortgagor failed to pay the revenue which accordingly was paid by the mortgagee. Subsequently the property was sold to the mortgagee for the amount of the mortgage *plus* the amount of the revenue paid by the mortgagee. In a suit to pre-empt this sale, *held,* that the pre-emptor was bound to pay the amount paid by the mortgagee for the revenue as a condition precedent to his obtaining possession of the property as well as the amount of the mortgage. BHOJ RAJ *v.* RAM NARAIN (1916) . . . **I. L. R. 38 All. 530**

2. ——— ——— ——— *Transfer—Mortgage—Use of the term "makbuza" not sufficient to constitute a mortgage.* The material por-

PRE-EMPTION—*contd.*

3. MORTGAGE—*concld.*

tion of a document executed by the borrowers to secure a loan was as follows :—" We agree that we shall pay annually the interest and in default of payment of interest for two years, the creditors shall have the right without waiting for the expiry of the time fixed, to file suit and to recover their dues from the property mortgaged (*makbuza*) and if the creditors make delay in realizing the principal and interest then the aforesaid creditors shall not be entitled to recover their dues under the deed from any other property of myself excepting the property mortgaged (*makbuza*)." A claim for pre-emption was brought based upon this document which was claimed to be a sale, or at least a mortgage. *Held* by RICHARDS *C. J.*, that it was very difficult to distinguish the transaction evidenced by the document in question from what is ordinarily called a " simple mortgage." On a construction, however, of the wajib-ul-arz it was held not to include mortgages which did not involve a change of possession. *Held* by TUDBALL *J.*, that the document under consideration did not amount to a mortgage, but at most constituted a charge on the property referred to therein. *Dalip Singh* v. *Bahadur Ram, I. L. R. 34 All. 446*, referred to. KHURSHED ALI *v.* ABDUL MAJID (1916) . . **I. L. R . 38 All. 361**

4. PRICE.

———— *Decree for pre-emption —Price for pre-emption directed to be deposited within one month—Decree-holder's application for extension of time granted—Deposit made within extended time—Civil Procedure Code (Act V of 1908), O. XX, r. 14—S. 148, Civil Procedure Code—Court's jurisdiction—S. 115.* On the last day fixed for the deposit of money by a decree of pre-emption, the decree-holder applied for extension of time to make the deposit and he deposited the amount within the extended time granted to him (*ex parte*) by the Court: *Held*, that the Court had jurisdiction to extend the time. The High Court declined to interfere under s. 115 of the Civil Procedure Code. ABU MUHAMMAD MIAN *v.* MUCKUT PERTAP NARAIN (1916).

20 C. W. N. 860

5. RIGHT OF PRE-EMPTION.

1. ———— *Wajib-ul-arz—Owners of resumed muafi land—Co-sharers. Held*, that the owners of a plot of resumed *muafi* land assessed to revenue separately from the rest of the village, which constituted one 16-anna mahal, was not a co-sharer with the owners of the mahal, so as to give him a right of pre-emption on sale of the mahal, under the terms of the wajib-ul-arz which declared a right of pre-emption to exist, on a sale by a co-sharer, in favour of other *co-sharers* in the village. *Kallian Mal* v. *Madan Mohan, I. L. R. 17 All. 447, Narain Das* v. *Ram Saran Das, I. L. R. 17 All. 419, Raghunath Prasad* v. *Kanhaya Lal, All. W. N., 1902, 68, Ahmad Ali* v. *Najam-un-nissa, 2 All. L. J. 145*, and *Battu Lal* v. *Bhola Nath, 19 Indian Cases 119*, referred to. *Narain Prasad* v. *Munna Lal, I. L. R. 30 All. 329*, not followed. MAHADEO PRASAD *v.* JAGAR DEO GIR (1916) . **I. L. R. 38 All. 260**

PRE-EMPTION—*contd.*

5. RIGHT OF PRE-EMPTION—*contd.*

2. ———— *Property, partition of, after institution of suit but before decree —Plaintiff, if entitled to decree—Court, if should take notice of matters which come into existence after suit—Talab-i-muasibat, erroneous statement as to price in, if invalidates—Review on ground not before taken, when allowed—Suits Valuation Act (VII of 1887), s. 11—Valuation—Appeal—Jurisdiction.* SANDERSON *C. J.*, and MOOKERJEE *J.*—The right of the plaintiff to get pre-emption must exist not only at the time of the sale, but also at the time of the institution of the suit, and finally up to and at the date of the decree of the trial Court. A judgment passed by the High Court on second appeal was reviewed on a ground not taken at any previous stage of the proceeding, when the ground raised a pure question of law which did not depend for its determination upon the investigation of new facts and when the alleged error was apparent on the face of the record *Connecticut Fire Insurance Co.* v. *Kavannagh*, [*1892*] *A. C. 473 at p. 480*, referred to. *Per* MOOKERJEE *J.*—The decree in a suit should ordinarily conform to the rights of the parties as they stood at the date of its institution. But there are cases when it is incumbent upon a Court of Justice to take notice of events which have happened since the institution of the suit and to mould its decree according to the circumstances as they stand at the time the decree is made. This principle will be applied where it is shown that the original relief claimed has, by reason of subsequent change of circumstances, become inappropriate or that it is necessary to base the decision of the Court on the altered circumstances in order to shorten litigation or to do complete justice between the parties. *Per* SHARFUDDIN and ROE *JJ.*—For the performance of the *talabi-i-muasibat* what is necessary is an expression by the pre-emptor in clear and explicit terms that the demands to make the purchase and it is not necessary that he should, at the time of the performance of the ceremony, make any mention of the price. Where in performing the *talab*, the claimant, owing to mistaken information, understated the price, though the ceremonies required by law were fully performed: *Held*, that the *talab* was validly performed Plaintiff, suing for pre-emption, valued his suit at Rs. 4,500, the price for which, according to his information, the property had been sold to the defendant. The suit was dismissed by the Subordinate Judge but decreed on appeal by the District Judge who, however, found that the real value of the property was over Rs. 6,000. On second appeal it was urged that having regard to the value of property as found by the District Judge, appeal lay to the High Court and not to the District Judge, but the point was not taken in the

PRE-EMPTION—*concld.*

5. RIGHT OF PRE-EMPTION—*concld.*

memorandum of appeal. *Held, per* SHARFUDDIN and ROE, *JJ.* That this objection should be overruled, in view of s. 11 of the Suits Valuation Act, and that the decision in *Raj Lakshmi Dasee* v. *Katyayani Dasee, I. L. R. 38 Calc. 637*, was distinguishable from the present case as in that case the suit was intentionally and grossly undervalued. NURI MIAN *v.* AMBICA SINGH (1916).
20 C. W. N. 1099

6. RULE OF PRE-EMPTION.

——— *Rule of pre-emption does not exist in the Khandesh District—Bombay Regulation IV of 1827, cl. 26.* In the District of Khandesh in the Bombay Presidency, the rule of pre-emption does not exist either as a rule of law or as a rule of justice, equity and good conscience. MAHOMED BEG AMIN *v.* NARAYAN MEGHAJI (1915).
I. L. R. 40 Bom. 358

PREFERENCE.

See DEBTOR AND CREDITOR.
I. L. R. 43 Calc. 521

PREFERENTIAL CLAIM.

See MUTAWALLI.
I. L. R. 43 Calc. 467

PREJUDICE.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 256.
I. L. R. 39 Mad. 503

See FALSE INFORMATION.
I. L. R. 43 Calc. 173

PRELIMINARY DECREE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 47, O. XXII, R. 10.
I. L. R. 39 Mad. 488

See COURT FEES ACT (VII OF 1870), S. 7, CL. (*4*) . **I. L. R. 39 Mad. 725**

See MORTGAGE DECREE.
I. L. R. 39 Mad. 544

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 88, 89.
I. L. R. 40 Bom. 321

——— **in favour of puisne mortgagee—**

See CIVIL PROCEDURE CODE (1908), O. XXXIV, RR. 4, 5.
I. L. R. 38 All. 398

PRELIMINARY POINT.

See REMAND . **I. L. R. 43 Calc. 148**

PRESCRIPTIVE USER.

See EASEMENTS ACT (V OF 1882), S. 15.
I. L. R. 39 Mad. 304

PRESIDENCY BANKS ACT (XI OF 1876)—

——— **ss. 36, 37**—*Directors lending on the unauthorized securities (e.g.), mortgage of immovable property, not ultra vires of the bank.* The provisions of s. 37 of the Presidency Banks Act (XI of 1876) prohibiting the directors of such banks from entering into certain kinds of transactions therein mentioned such as taking mortgages of immovable properties are only directory and not mandatory and they prohibit only the directors and not the banks from entering into them; and if such transactions are actually entered into by the directors, on behalf of the bank they are not *ultra vires* of the bank. The directors are only agents of the bank and if in entering into such transactions they exceed the powers given to them by the Act, the bank can ratify them and enforce them; and an assignee (as in this case) from the bank of its rights under such transactions, is equally entitled to enforce them. DAMODAR SHANBOGUE *v.* RAMA ROW (1915)
I. L. R. 39 Mad. 101

PRESIDENCY BANKS ACT (XI OF 1876)—*concld.*

——— **s. 36**—*concld.*

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882)—

——— **s. 19, cl.** (s)—*Jurisdiction—Unsuccessful claim proceedings—Suit to recover movable property attached by the Presidency Small Cause Court or for payment of its value—Not a suit for a mere declaration—The Small Cause Court Rules—Claim petitions—Civil Procedure Code (Act V of 1908).* A suit by the unsuccessful party in claim proceedings to recover movable property attached by the Presidency Small Cause Court or for the payment of its value is not excluded from the jurisdiction of the Presidency Small Cause Court under s. 19, cl. (*s*), of the Act as a suit for a declaratory decree. The statutory suit to establish his right given to the unsuccessful party in claim proceedings under the Code involves in every case a prayer for the setting aside of a summary order of a Civil Court; this being so, such a suit cannot be regarded as a suit for a mere declaration. *Phulkumari* v. *Ganshyam Misra, I. L. R. 35 Calc. 202, 235*, followed. The Small Cause Court rules reproduce the provisions of the Civil Procedure Code as to claim-petitions and cases under them must be governed by the same considerations. RAJAMMAL *v.* NARAYANASAMY NAICKER (1915) . . . **I. L. R. 39 Mad. 219**

——— **s. 22—**

See COSTS . . **I. L. R. 43 Calc. 190**

——— **s. 69—**

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), S. 17.
I. L. R. 39 Mad. 689

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—

——— **ss. 6, 8, 25, 38, 39** (*2*), —(*a*), (*b*), (*c*), (*d*), (*f*), (*j*)—*Protection order—Appeal lies against a protection order—Opposing creditor, though not a decree-holder, a person aggrieved by the protection order—Protection order, a privilege to be granted*

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd.*

——— s. 6—*concld.*

or withheld, according to the character and circumstances of the insolvency—Insolvent guilty of malpractices not entitled to protection. Under s. 8, cl. (2) (*b*) of the Presidency Towns Insolvency Act (III of 1909) an appeal lies from a protection order made by a Judge in the exercise of the insolvency jurisdiction. It does not appear from s. 8 of the Presidency Towns Insolvency Act, that the legislature wished to put any limitation upon appeals made from original orders of a judge except perhaps orders regulating procedure. The expression "any person aggrieved" in cl. 2 of the last-mentioned section is not to be limited to a creditor who has obtained decrees against the insolvent. Every application for protection after refusal or suspension of discharge must be judged on its merits. If the insolvent has acted recklessly and dishonestly the fact that he cannot pay, is no reason for depriving the creditor of the power of punishing him by attachment and imprisonment to the extent the law allows. A protection order is a privilege to be granted or withheld as the Court in its discretion may determine. In exercising that discretion, it is relevant and proper for the Court to have regard to the character and circumstances of the insolvency. Where a Court finds that the insolvency is of a flagrantly culpable kind, being the result of gross extravagance accompanied by grave malpractices and a total disregard of the creditors whose money was squandered, protection ought to be refused. *Marris* v. *Ingram, 13 Ch. D. 338,* and *In re Gent: Gent-Davis* v. *Harris, 40 Ch. D. 190, 195,* referred to. MAHOMED HAJI ESSACK *v.* SHAIK ABDOOL RAHIMAN (1915)

I. L. R. 40 Bom. 461

——— s. 8 (2) (*b*)—

See INSOLVENCY **I. L. R. 43 Calc. 243**

——— s. 17—

1. ——— *Suit by creditors against an adjudicated insolvent—Suit commenced without the leave of the Court—Application for leave after the institution of the suit—Application refused.* The leave contemplated under s. 17 of the Presidency Towns Insolvency Act (III of 1909) is leave which ought to be obtained before the commencement of a suit, and cannot be granted after the same is filed. *In re* DWARKADAS TEJBHANDAS (1915) . . . . **I. L. R. 40 Bom. 235**

2. ——— *Decree of Presidency Small Cause Court—Judgment-debtor, adjudicated insolvent subsequent to decree—Adjudication by the High Court—Application for execution by arrest in the Presidency Small Cause Court—Leave of the High Court, not obtained—Release of judgment-debtor on security—Non-appearance, effect of—Security bond, validity of—Jurisdiction—Waiver—Presidency Small Cause Courts Act (XV of 1862), s. 69.* Where a decree was passed by the Presidency Small Cause Court against a person who was subsequently adjudicated an insolvent by the High Court in the exercise of its insolvency jurisdiction, the former Court had no jurisdiction without the leave of the High Court to entertain any application for execution of the decree against the insolvent under s. 17 of the Insolvency Act III of 1909. Consequently, a security bond, executed to the Court by a third party for the appearance of the judgment-debtor in the course of the execution proceedings carried on without the leave of the High Court, was obtained without jurisdiction and was void in law. A reference to the High Court under s. 69 of the Presidency Small Cause Courts Act should state clearly the points on which there is a difference of opinion among the Judges of the Small Cause Court. EASWARA *v.* GOVINDARAJULU NAIDU (1915)

I. L. R. 39 Mad. 689

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd.*

——— s. 17—*concld.*

——— ss. 25, 26, 27, Sch. II—*Creditor, if includes his benamidar—Ss. 12 (1) (a) 13, ss. 8 (2) (b), and 86—Official Assignee, if may examine petitioning creditor's claim and remove his name—Benamidar, onus of proof of advances on own behalf—"Person aggrieved."* It is open to the Official Assignee after the insolvency to examine the claim of the petitioning creditor and if he finds that in fact there is no debt due to the petitioning creditor, he must strike out the name of such creditor from the list. A *benamidar* is not entitled to claim as a creditor in the insolvency. The persons who really advanced the moneys should come forward and prove their claims before the Court. MOOKERJEE J.—The term "creditor" in the Presidency Towns Insolvency Act does not include the *benamidar* of a creditor. Any person who makes an application to a Court for a decision or any person who is brought before the Court to submit to a decision is, if the decision goes against him, thereby a person aggrieved by that decision, within the meaning of that expression in s. 86 of the Act. KETOKEY CHURAN BANERJEE *v.* SARAT KUMARI DABEE (1916)

20 C. W. N. 995

——— s. 36 (1)—*Application under, if may be made ex parte—Calcutta High Court Insolvency Rules 17, 18, 19 and 30.* Applications under s. 36 (1) of the Presidency Towns Insolvency Act for examination of persons thereunder are intended to be made *ex parte* under the rules framed by the Calcutta High Court under s. 112 of the Act. To such applications r. 30 applies and not rr. 17, 18 and 19, and this view is supported by the English Bankruptcy Act (1914), 4 & 5, George V, Ch. 59, and the rules thereunder. *In re* KISSORY MOHAN ROY (1916) . . **20 C. W. N. 1155**

——— s. 57—

1. ——— *Intimations to the creditor that debtor is about to suspend payment—Transfer of goods to creditor thereafter, but before the filing of a petition for declaration of insolvency, not a bonâ fide transfer—Bonâ fides a requisite under s. 57 of the Act.* After receiving notice from the debtor's

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*concld.*

——— **s. 57**—*concld.*

agent that the debtor was going to suspend payment, a creditor took, on the day previous to the debtor's filing a petition in insolvency, possession of the debtor's goods by virtue of a letter of lien given by the debtor to secure past and future advances and overdrafts: *Held*, affirming the decision of WILLIS, *J.*, (*a*) that giving notice to a creditor that the debtor is about to suspend payment is an act of insolvency, (*b*) that though by the transaction of taking possession of the goods, the creditor became the transferee of the goods, he was not a *bonâ fide* transferee for value within s. 57 of the Presidency Towns Insolvency Act (III of 1909), as the act of taking possession was after knowledge of the act of insolvency, and (*c*) that, though the body of s. 57 of the Act has not expressly prescribed that the transfer should be *bonâ fide* yet *bonâ fides* is legally necessary to claim the benefit of the section. *Per* CURIAM.—The provisions and the wording of the Presidency Towns Insolvency Act being almost the same as those of the English Bankruptcy Act, the rulings of the English Courts on the latter Act are to be followed in interpreting the Indian Act. *Obiter*: A mere intimation to a creditor by the debtor or his agent that the debtor is insolvent does not amount to an act of insolvency. MERCANTILE BANK OF INDIA, LD. *v.* THE OFFICIAL ASSIGNEE, MADRAS (1913) . . **I. L. R. 39 Mad. 250**

2. ——— *Transfer by insolvent prior to insolvency to wife—Benami transaction—Transfer by wife to another after husband's adjudication.* A husband transferred his share in his family dwelling-house to his wife without consideration on the 11th November 1911. On the 27th of February 1912 he was adjudicated insolvent and his wife on the 12th of October 1912 transferred the property which had been so conveyed to her to the appellant: *Held*, that even assuming that the appellant had purchased the property for valuable consideration and without notice of the adjudication of the insolvent, the transfer to the appellant subsequent to the adjudication was void under s. 57 of the Presidency Towns Insolvency Act inasmuch as the transfer by the husband to the wife prior to his insolvency was found to be fictitious or *benami* and the consequence that the property had vested in the Official Assignee prior to the transfer to the appellant. *Per* MOOKERJEE *J.*—No title by estoppel accrued to the appellant as against the Official Assignee. The Official Assignee to what extent representative of insolvent considered. *In re Slobodinsky*, [*1903*] *2. K. B. 517, 524*, and *In re Hart*, [*1912*] *3. K. B. 6*, distinguished. *In re* LAKHI PRIYA DASI *v.* RAI KISSORI DASSI (1916) . . . . . **20 C. W. N. 554**

PRESS.

——— **keeping a, whether a "licensed calling" or common law right—**

See PRESS ACT (I OF 1910), S. 3 (*1*), PROVISO . **I. L. R. 39 Mad. 1164**

PRESS ACT (I OF 1910).

——— **s. 3** (*1*), *proviso, construction of—Original order of Magistrate dispensing with security—Demand of security by Magistrate, thereafter, legality of—Government of India Act (5 & 6 Geo. V), cap. 61, ss. 106 and 107—Criminal Procedure Code (Act V of 1898), s. 435—High Court, power of, to issue writ of certiorari, under, to cancel Magistrate's order—Magistrate demanding security, not a "Court" but executive officer—Writ of certiorari, when, can be issued—"Judicial Act," what is—Indian Press Act (I of 1910), s. 22, whether a bar to issue of writ of certiorari—"Proviso," object of—Keeping a press, whether a "licensed calling" or common law right. Per* ABDUR RAHIM, *Offg. C. J.*, and SESHAGIRI AYYAR *J.* (AYLING, *J.*, not dissenting). The Chief Presidency Magistrate acting under s. 3 (*1*) of the Indian Press Act is not a "Court" but is only an executive officer entrusted with the performance of certain administrative duties, whose details are left entirely to his discretion; hence an order by him requiring security from the keeper of a press, even if in excess of his powers, is not capable of being revised by the High Court, either by means of a writ of *certiorari* issued under ss. 106 and 107 of the Government of India Act (5 and 6 Geo. V), cap. 61, or by the exercise of revisional powers as provided by section 435, Criminal Procedure Code (Act V of 1898). *Sivagami Achi* v. *Subrahmania Ayyar, I. L. R. 27 Mad. 259, Shanker Sarup* v. *Mejo Mal, I. L. R. 23 All. 313, Minakshi* v. *Subramaniya, I. L. R. 11 Mad. 26*, and *Vijiaraghavalu Pillai* v. *Theagaroya Chetti, I. L. R. 38 Mad. 581*, applied. *Per* ABDUR RAHIM, *Offg. C. J.* and SESHAGIRI AYYAR *J.* Whether an act is judicial or not depends on the nature of the powers conferred by the legislature, the character of the act sought to be quashed and the nature and extent of the discretion vested with the authority and other similar considerations. *Per* Curiam.—Every keeper of a printing press who makes a declaration under s. 4 of the Press and Registration of Books Act (XXV of 1867) after the commencement of the Indian Press Act (I of 1910), is simultaneously liable to deposit such security as the Magistrate demands under s. 3 (1) of the Indian Press Act, even though the press and the newspaper published therein were in existence before the passing of the Press Act. But the Magistrate may, under the proviso to s. 3 (*1*), make an order dispensing with a security. *Per* ABDUR RAHIM, *Offg. C. J.*, and SESHAGIRI AYYAR, *J.* (AYLING *J. contra*)—If once a Magistrate dispenses with a security, he cannot thereafter cancel such order and demand security. The words "or may from time to time cancel or may make any order under this subsection," which are to be found in the same proviso as that which enables a Magistrate to make an order dispensing with security cannot be construed to include an order dispensing with security. A proviso appended to a section is either an explanation or a qualification of the section. It does not add to or enlarge the scope of the section. *West Derby Union* v. *Metropolitan Life Assurance*

PRESS ACT (I OF 1910)—*contd.*

——— s. 3—*contd.*

Society, [*1897*] *A. C. 647*, referred to. *Per* AYLING *J.*—The substance, and not the form, must be looked at, and that which is in form a proviso may in substance be a fresh enactment, adding to and not merely qualifying that which goes before; and this proviso is really such a one. *Per* ABDUR RAHIM, *Offg. C. J.*, and SESHAGIRI AYYAR *J.* The Supreme Court of Madras had the right to issue writs of *certiorari* as the King's Bench in England, and that right has been preserved to the High Court by the Charters of 1861 and 1865, the Letters Patent of 1865 and the Government of India Act of 1915 and no Act of any legislature has taken away this right. *Nundo Lal Bose* v. *The Corporation for the Town of Calcutta, I. L. R. 11 Calc. 275*, referred to. *Per* ABDUR RAHIM, *Offg. C. J.*, and SESHAGIRI AYYAR, *J.* (AYLING, *J. contra*)—*Obiter.* Supposing the orders of the Magistrate under section to be judicial, s. 22 of the Indian Press Act has not taken away this right, in cases where the orders are *ultra vires*. *Bradlaugh, L. R. 3 Q. B. D. 509*, and *The Colonial Bank of Australasia* v. *Willan, L. R. 5 P. C. 417, 422*, referred to. *Per* AYLING *J.* S. 22 precludes revision of an order demanding security whether it was with or without jurisdiction. The Press Act is a self-contained and complete Act. *Quære*: Whether the order of the Magistrate demanding security is not judicial? Power of issuing writ of *certiorari* being only discretionary, it cannot be issued where there is delay in applying for it. *Per* ABDUR RAHIM, *Offg. C. J.* While the powers of revision of the High Court are exercisable only in respect of proceedings of ordinary Courts, writs of *certiorari* are available to quash proceedings not only of Courts but also of tribunals specially constituted and entrusted with duties of a judicial character. *Per* ABDUR RAHIM, *Offg. C. J.* (SESHAGIRI AYYAR, *J., contra*)—Proceedings will not be removed to the superior Court by a writ of *certiorari* unless that Court can deal with them fully and satisfactorily. *Per* SESHAGIRI AYYAR *J.* Even after the Indian Press Act, the right to keep a press and to use it is a common law right and it cannot be likened to a "licensed trade or calling." Even if a statute expressly takes away the power to issue writs of *certiorari* it must be deemed that it is taken away only in respect of acts not *ultra vires*. *In re* MRS. BESANT (1916)

I. L. R. 39 Mad. 1164

——— **ss. 3 (*1*), 4 (*1*), 17, 19, 20 and 22**—*Demand of security by Magistrate under proviso to s. 3 (1), legality of—Order by Government under s. 4 (1) forfeiting security and copies of newspaper, legality of—Jurisdiction of High Court under s. 17, extent of—"Words . . . which are likely or may have a tendency, directly or indirectly whether by inference, suggestion, allusion, metaphor, implication, or otherwise" in s. 4 (1), meaning of—"Hatred" or "contempt," and "Government established by law in British India," in s. 4 (1), meaning of—Intention of writer whether essential under s. 4 (1)—Onus under s. 4 (1), whether on applicant—"In aid of the proof of the nature of or tendency of the words" in s. 20, effect of—Ss. 4 and 22, whether ultra vires of the Imperial Legislature of India, as contravening s. 43 of 3 & 4 Will. IV, cap. 85, or s. 22 of 24 & 25 Vict., cap. 67, or s. 65 of the Government of India Act 5 & 6 Geo. V, cap. 61.* The petitioner in this case who was the keeper of a printing press and publisher of a newspaper therein made his application to the High Court under s. 17 of the Indian Press Act (I of 1910) for cancellation of (*a*) an order of the Chief Presidency Magistrate of Madras, demanding from her under s. 3 (*1*) of the Act, security for two thousand rupees in supersession of a previous order made by him dispensing with security and (*b*) an order of the Governor in Council, Madras, declaring under s. 4 (*1*) the security of the two thousand rupees so deposited and all copies of the newspaper wherever found, to be forfeited to His Majesty. In dismissing the application on the ground that some of the specified articles (hereinafter called extracts) of the newspaper were of the objectionable nature described in s. 4 (*1*) of the Press Act, their Lordships of the Special Bench, *held*, as follows:—In an application, made under s. 17 of the Indian Press Act, the only question which the Special Bench of the High Court can determine is whether the extracts complained of did not contain any words of the nature described in s. 4 (*1*) and the Court has no jurisdiction to determine any other question, such as, (*a*) whether the particular order of the Magistrate demanding security was beyond his powers, or (*b*) whether s. 4 or 22 of the Press Act is *ultra vires* of the powers of the Imperial Legislature of India as contravening any Act of Parliament, or (*c*) whether the order of forfeiture was legally made. *In re Mahomed Ali, I. L. R. 41 Calc. 466*, referred to. Advocating, "Home Rule" for India is not *per se* objectionable. But such advocacy must not offend against existing laws. "Hatred" and "contempt" towards "the Government" occurring in s. 4 may be created by articles "imputing to the Government base, dishonourable corrupt or malicious motives in the discharge of its duties," or by articles unjustly "accusing the Government of hostility or indifference to the welfare of the people." Though the operative or enacting portion of s. 4 (*1*) (*c*) does not make the intention or motive of the writer of the articles complained of, material in considering whether the words are not of the nature described in s. 4 (*1*), Explanation 2 thereto requires that the writer must *intend* to excite hatred, contempt or disaffection if his writings are to be brought within cl. (*c*), the intention being deducible mainly from the words used. The words "the Government established by law of India" occurring in s. 4 are not to be construed as indicating only the supremacy of the British Crown over India and the British connection with it, as opposed to independence. *Per* ABDUR RAHIM, *Offg. C. J.*,

PRESS ACT (I OF 1910)—*contd.*

——— s. 3—*contd.*

and AYLING, *J.*—The phrase in s. 4 " any words . . . which are likely or may have a tendency, directly or indirectly, whether by inference, suggestion, allusion, metaphor, implication or otherwise," can relate only to the natural and probable effect which the words themselves are likely to produce on a normal reader of the paper, possessed at least of average capacity and the phrase cannot relate to any and every *possible* effect which they can ingeniously be supposed to produce. *Per* SESHAGIRI AYYAR, *J.*—The phrase is not confined to *probable* effects only, but includes also *reasonably possible* effects which the words can produce. *Per* ABDUR RAHIM, *Offg. C. J.*, and SESHAGIRI AYYAR, *J.*—The onus of proving that the extracts complained of are not of the objectionable nature described in s. 4 (*1*) is on the applicant. *Per* AYLING, *J.*—The Act does not throw the onus either on the applicant or on the Government, but the tendency of the words has to be determined by the Code from the words themselves. *Per* AYLING, *J.*—Articles dwelling adversely on the foreign origin and character of the Government can also create hatred and contempt. *Per* ABDUR RAHIM, *Offg. C. J.*—" Hatred" and " contempt " in s. 4 (*c*) mean something more than mere disapproval or dislike. *Per* AYLING, *J.*—" Hatred " and " contempt " in s. 4 (*1*) (*c*) do not mean only such hatred and contempt as would lead to the commission of crimes referred to in the other clauses of the sub-section, *viz.*, murder, violence, resistence to law, intimidation of public servants, etc. *Per* ABDUR RAHIM, *Offg. C. J.*, and SESHAGIRI AYYAR, *J.*—The words in s. 4 (*1*) (*c*), *viz.* " the Government established by law in British India " mean the British rule, and the collective body of men authorized by law to administer executive Government in British India—the existing political system as distinguished from any particular set of administrators or individuals administering the country for the time being. In this sense the " Government " includes not only Government of India but also Local Government. *Queen-Empress* v. *Bal Gangadhar Tilak, I. L. R. 22 Bom. 112, Emperor* v. *Bhaskar, 8 Bom. L. R. 421, Queen-Empress* v. *Jogendra Chunder Bose, I. L. R. 19 Calc. 35*, and *Reg.* v. *Alexander Martin Sullivan, 11 Cox's Cr. C. 51*, referred to. *Per* AYLING, *J.*—In the absence of any other definition in the Press Act, the phrases " Government " " the Government," " Government of India," and " Local Government " used in the Indian Press Act are to be interpreted as defined in s. 3 of the General Clauses Act. *Per* ABDUR RAHIM, *Offg. C. J.*—The protection afforded by Explanation 2 to s. 4 (*1*) is extended only to comments on Government's measures and actions, etc., and not to attacks on Government itself and these have to be judged by the light of s. 4 alone without reference to the explanation. Construing the extracts on the above principles :—ABDUR RAHIM, *Offg. C. J.*, held Extracts Nos. 1, 2, 6, 11, 12 and 13 to be of the nature described in s. 4 (*1*) (*c*) and Extract No. 12 to be also of the nature described in s. 4 (*1*) (*e*). AYLING, *J.*, held Extracts Nos. 1, 2, 6, 9, 10, 11, 12, 13 and 14 to be of the nature described in s. 4 (*1*) (*c*) and Extract No. 7 and the editorial note to extract No. 4 (*d*) to be of the nature described in s. 4 (*1*) (*e*). SESHAGIRI AYYAR, *J.*, held Extracts Nos. 2, 8, 11 and 13 to be of the nature described in s. 4 (*1*) (*c*) and Extract No. 11 to be also of the nature described in s. 4 (*1*) (*c*). *Per* ABDUR RAHIM, *Offg. C. J.*—The Indian Press Act does not impose any duty on a Local Government to issue any warning to or to ask for any explanation from the keeper of the Press before taking action under the Act. *Per* AYLING, *J.*—The fact that the words complained of are those of correspondents and not of the editor or publisher, does not in any way minimize the responsibility of the editor or publisher and the intention of the writer must be ascribed to the publisher. *Per* ABDUR RAHIM, *Offg. C. J.*—The Indian Legislature is not competent to enact anything which will affect any unwritten laws of the realm whereon may depend the allegiance of the subject to the Crown. *Quœre :* Whether s. 4 of the Indian Press Act is *ultra vires* of the Imperial Legislature of India ? Allegiance is the return which the subject renders to the sovereign for the protection afforded by the latter. *In the matter of Ameer Khan, 6 B. L. R. 392, In the matter of Ameer Khan, 6 B. L. R. 456*, and *Secretary of State* v. *Moment, I. L. R. 40 Calc. 391*, referred to. *Per* SESHAGIRI AYYAR, *J.*—S. 4 of the Indian Press Act does not contravene s. 43 of 3 & 4 Will. IV (corresponding to s. 65 of the Government of India Act, 1915) and is not *ultra vires* of the Imperial Legislature. The section does not deprive the subject of the right of showing that the forfeiture has not been incurred. Simply because, instead of providing for the taking of the decision of the Court first and then declaring the forfeiture, the section has reversed the process, the section cannot be said to affect any unwritten law whereon may depend allegiance of the subject to the Crown. S. 22 of the Press Act only enacts that the declaration of forfeiture shall be conclusive evidence of the fact that the forfeiture has taken place and not that the forfeiture has been legally made. The words " in aid of the proof of the nature or tendency of the words " in s. 20 of the Indian Press Act do not empower the Crown alone to tender in evidence, other articles of the newspaper in support of its contention, but the party proceeded against can also do so in support of his contention. *Per* AYLING and SESHAGIRI AYYAR, *JJ.*—But articles which do not illustrate the general policy of the paper when that is in question or have no direct connection with the articles complained of, are useless. MRS. BESANT *v.* EMPEROR (1916) . **I. L. R. 39 Mad. 1085**

PRESUMPTION.

See MALABAR LAW.

I. L. R. 39 Mad. 317

PRESUMPTION—*concld.*

See SECOND APPEAL.
I. L. R. 38 All. 122

——— of death—

See PRACTICE . I. L. R. 40 Bom. 220

PREVIOUS ACQUITTAL.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 403.
I. L. R. 40 Bom. 97

PREVIOUS CONVICTION.

——— proof of—

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R. 43 Calc. 1128

PRIMOGENITURE.

See HINDU LAW—IMPARTIBLE ESTATE.
I. L. R. 38 All. 590

See OUDH ESTATES ACT (I OF 1869), SS. 8, 10 . . I. L. R. 38 All. 552

PRINCIPAL.

——— death of—

See PRINCIPAL AND AGENT.
I. L. R. 43 Calc. 248

——— liability of—

See PRINCIPAL AND AGENT
I. L. R. 43 Calc. 511

PRINCIPAL AND AGENT.

See COSTS . I. L. R. 43 Calc. 190

See OATHS ACT (X OF 1878), SS. 8, 9, 10.
I. L. R. 38 All. 131

1. ——— *Construction of Power of Attorney—Denial of authority of agent—Chetty money-lending firm, business of—Power implied from nature of business which could not be carried on without it—Proof of similar previous transactions with objection by principal—Account books, presumption to be drawn from—Evidence Act (I of 1872), s. 114.* The defendant was a Chetty and had a large money-lending business in Rangoon which he carried on by an agent to whom he gave a power of attorney for the general management of his business in which he stated the duties and powers entrusted to him as being, "to transact, conduct and manage all affairs, concerns, matters and things" in which he "may be in anywise interested and concerned," and for that purpose "to use or sign my name to any document or writing whatsoever; to borrow money from any bank or banks, firm or firms, person or persons either with or without pledge of securities for money advanced to various persons," and "to make, draw, sign, accept, endorse, negotiate and transfer all and every or any bills of exchange, promissory notes, hundies, cheques, drafts, bills of lading and all other negotiable securities whatsoever to which my signature or endorsement may be required or which my said attorney may in his absolute discretion think fit to make, draw, sign, accept, endorse, negotiate and transfer in my

PRINCIPAL AND AGENT—*contd.*

name and in my behalf." Under this power the agent pledged the firms credit with the plaintiff Bank to enable a client who applied to him for financial assistance to have a cash credit account opened in his name and obtain from the Bank advances to secure due repayment of which he executed a promissory note in favour of defendant's firm which the agent endorsed over to the Bank in conformity with the provisions of the Presidency Banks Act (XI of 1876), s. 37, cl. (*e*), the agent at the same time giving the Bank a letter of guarantee on behalf of his firm. The client, after drawing large sums of money on the cash credit account thus opened, having become insolvent, the Bank brought an action for the amount due, to which the defence was a denial of authority on the part of the agent to enter into the transactions so as to bind the defendant's firm. *Held*, (reversing the decision of an Appellate Bench of the Chief Court), that applying the principles of construction of powers of attorney laid down in *Bryant, Powis and Bryant* v. *La Banque du Peuple*, [*1893*] *A. C. 170*, the authority to enter into transactions of the nature in dispute in the present case, was to be found in the document itself by necessary implication from the nature of the business with the general management of which the agent was entrusted: without such authority it would hardly have been possible to carry on the business of a money-lender and financier. On the evidence, moreover, it was proved that amongst such Chetty money-lending firms it was the practice for the agent to pledge the credit of the firm; and that for a considerable time similar transactions had been entered into previously by the agent without this authority being questioned. The mere fact that the defendant did not receive any benefit on the transaction would not (if it were the case) relieve him of liability, if the authority of the agent was established; but the defendant's books of accounts which were called for and not produced, would presumably have shown such transactions, and the receipt of commission on them. BANK OF BENGAL *v.* RAMANATHAN CHETTY (1915) . . . I. L. R. 43 Calc. 527

2. ——— *Liability of principal for fraudulent conduct of the agent—Scope of the agent's or servant's employment—Unauthorised acts—Scope of agency—Tort*—The principal is liable to third persons in a civil suit for the frauds, deceits, concealments, misrepresentations, torts, negligence and other malfeasances or misfeasances and omissions of duty of his agent in the course of his employment although the principal did not authorise or justify or participate in, or, indeed, know of such misconduct or even if he forbade the acts or disapproved of them. The principal is not liable for the torts or negligences of his agent in any matter beyond the scope of the agency unless he has expressly authorised them to be done, or he has subsequently adopted them for his own use and benefit. *McGowan* v. *Dyer, L. R. 8 Q. B. D. 141, Hern* v. *Nichols, 1 Salkeld 289, National Exchange Co.* v. *Drew, 2 Macq. H. L. 103,*

PRINCIPAL AND AGENT—*contd.*

Brocklesby v. *Temperance P. B. Society*, [*1895*] *A. C. 173*, *Pearson* v. *Dublin Corporation*, [*1907*] *A. C. 851*, *Citizen's Life Assurance Co.* v. *Brown*, [*1904*] *A. C. 423*, *Glasgow Corporation* v. *Lorimer*, [*1911*] *A. C. 209*, *Bowles* v. *Stewart*, *1 Sch. & Lef. 209*, *FitzSimons* v. *Duncan*, *2 I. R. 483*, *Subjan Bibi* v. *Sariatulla*, *3 B. L. R. 413*, *Morrison* v. *Verschoyle*, *6 C. W. N. 429*, *Iswar Chunder* v. *Satish Chunder*, *I. L. R. 30 Calc. 207*. *Gopal Chandra* v. *Secretary of State*, *I. L. R. 36 Calc. 647*, *Motilal* v. *Govindram*, *I. L. R. 30 Bom. 83*, *British M. B. Co.* v. *Charnwood Forest Ry. Co.*, *18 Q. B. D. 714*, *Mackay* v. *Commercial Bank*, *L. R. 5 P. C. 394*, *Swire* v. *Francis*, *3 A. C. 106*, *Houldsworth* v. *City of Glasgow*, *5 A. C. 317*, referred to. *Lloyd* v. *Grace*, [*1912*] *A. C. 716*, and *Rubens* v. *Great Fingall*, [*1906*] *A. C. 439*, followed. *Barwick* v. *English Joint Stock Bank*, *L. R. 2 Ex. 259*, and *Burma Trading Corporation* v. *Mirza Mahomed Ally*, *I. L. R. 4 Calc. 116*, explained. Acts of fraud by the agent, committed in the course and scope of his employment, form no exception to the rule whereby the principal is held liable for the torts of his agent even though he did not in fact authorise the commission of the fraudulent act. This rule of liability is based upon grounds of public policy. It seems more reasonable that where one of the two innocent persons must suffer from the wrongful act of a third person the principal who has employed and retained a dishonest agent and has placed him in a position of trust and confidence, should suffer for his misdeed rather than a stranger. SHERJAN KHAN *v.* ALIMUDDI (1915) . . . **I. L. R. 43 Calc. 511**

3. ———— *Suit for account—Hypothecation of property as security for the proper discharge of his duties by the agent—Agreement to render account annually—Limitation Act (IX of 1908) Sch. I, Arts. 89, 115, 132—Death of the principal, effect of—Agent continuing in service of the heir—Contract Act (IX of 1872) ss. 207, 253, cl. (10)—Method to be adopted for rendering account.* Where certain immovable properties were hypothecated to the principal by the defendant as security for the valid discharge of duty as agent, in a suit for accounts by the principal: *Held*, that Art. 132 of the Limitation Act will apply, inasmuch as it is also by implication a suit to enforce a charge. *Hafezuddin Mandal* v. *Jadu Nath Saha*, *I. L. R. 35 Calc. 298*, followed. *Jogesh Chandra* v. *Benode Lal Roy*, *14 C. W. N. 122*, dissented from. On the death of the principal, an agency is terminated and a new agency is created if the agent continues in service of his principal's heir. Where there is an agreement to submit accounts annually, in a suit against the agent for an account Art. 89, and not Art. 115, of the Limitation Act will apply. *Shib Chandra Roy* v. *Chandra Narain Mookerjie*, *I. L. R. 32 Calc. 719*, and *Ashgar Ali Khan* v. *Khurshed Ali Khan*, *I. L. R. 24 All. 27*, followed. *Easin* v. *Baroda Kishore*, *11 C. L. J. 43*, dissented from. Duty of an agent does not end by merely submitting papers when accounts are demanded but a failure to explain them when called upon to do so will amount to a refusal under Art. 89 of the Limitation Act. *Hurrinath Rai* v. *Krishna Kumar Bakshi*, *I. L. R. 14 Calc. 147*, relied on. *Chand Ram* v. *Brojo Gobind*, *19 W. R. 14*, *Upendra Kishore* v. *Ramtara Debya*, *13 C. W. N. 696*, not followed. MADHUSUDAN SEN *v.* RAKHAL CHANDRA DAS BASAK (1915) . **I. L. R. 43 Calc. 248**

PRINCIPAL AND AGENT—*concld.*

4. ———— *Principal, suit by, against agent for accounts—Limitation—Limitation Act (IX of 1908). Art. 89.* The plaintiff as principal sued the defendant as agent for accounts. The agency was created in 1896 by a registered document which provided that accounts were to be rendered at the end of each year, the agent also hypothecating immovable property as security. In 1897 the plaintiff transferred the property to his wife who in 1899 re-transferred the property to her husband. The agency was terminated in 1910 and the suit was brought in 1911 for accounts from 1899: *Held*, that a new agency was created in 1899 irrespective of the agreement of 1896. That Art. 89 of the Limitation Act was applicable to the case and, as in this case, there was no demand and refusal during the continuance of the agency and as the suit was instituted within three years of the date when the agency terminated, the plaintiff was entitled to the accounts claimed. SURESH KANTA BANERJEE CHOUDHURY *v.* NAWAB ALI SIKDAR (1915) . . **20 C. W. N. 356**

PRINCIPAL AND INTEREST.

See LIMITATION ACT (IX OF 1908), ARTS. 132 AND 75 . **I. L. R. 39 Mad. 981**

PRIOR MORTGAGE.

See SUBROGATION.
I. L. R. 43 Calc. 69

PRIORITY.

See MORTGAGE . **I. L. R. 43 Calc. 1052**

PRIVATE DEFENCE.

See PENAL CODE (ACT XLV OF 1860), SS. 100, 325 . **I. L. R. 40 Bom. 105**

PRIVATE LAND.

See MADRAS ESTATES LAND ACT (I OF 1908), SS. 3, 8, 185.
I. L. R. 39 Mad. 341

PRIVATE PARTITION.

See JOINT ESTATE.
I. L. R. 43 Calc. 103

PRIVATE PATHWAY.

See MUNICIPALITY.
I. L. R. 43 Calc. 130

PRIVILEGES.

See SECRETARY OF STATE FOR INDIA.
I. L. R. 39 Mad. 781

PRIVITY.

———— **between parties—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 11 . **I. L. R. 40 Bom. 679**

PRIVY COUNCIL.

See APPEAL TO PRIVY COUNCIL.

See LEAVE TO APPEAL TO PRIVY COUNCIL.

See PRIVY COUNCIL DECISIONS.

See PRIVY COUNCIL, PRACTICE OF.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 110 **I. L. R. 40 Bom. 477**

PRIVY COUNCIL DECISIONS.

See WAKF, VALIDITY OF.
I. L. R. 43 Calc. 158

PRIVY COUNCIL PRACTICE OF.

See CONTRACT **I. L. R. 39 Mad. 509**

PROBATE.

See JOINT PROBATE.

See LIMITATION . **L. R. 43 I. A. 113**

See SECOND PROBATE.
I. L. R. 43 Calc. 625

——— **obtained by one executor—**

See HINDU LAW—WILL.
I. L. R. 39 Mad. 365

——— **suit to revoke—**

See DECLARATORY DECREE, SUIT FOR.
I. L. R. 43 Calc. 694

1. ——— *Succession duty—Court Fees Act (VII of 1870), s. 19 (c) as amended by Act XIII of 1875, s. 19 (c)—Death of the first executrix—Application for second probate—Duty payable, if any, on second probate.* When an executor, to whom probate has been granted, dies leaving a part of the testator's estate unadministered, and a new representative is appointed for the purpose of completing the administration there being no new succession and no new devolution of the estate, no fresh succession duty should be levied. What the legislature appears to have intended is that where the full fee, chargeable under the Court Fees Act on a probate, at the time it is granted, has been paid, no further fee shall be chargeable when a second grant is made in respect of that property as comprised in that estate. *In the goods of Chalmers, 21 W. R. 246n, In the goods of Gasper, I. L. R. 3 Calc. 733, In the goods of Innes, 16 W. R. 253, In the goods of Balthazar, (1908) L. B. R. 255, In the goods of Ameerun, 15 W. R. 496, Webster* v. *Spencer, 3 B. & Ald. 360, Cummins* v. *Cummins, 3 Jo. & Lat. 65, In the goods of Bell, L. R. 2 P. & D. 247, Anon, 1 Freeman, 313, Anon, 1 Ch. Cas. 265,* and *Watkins* v. *Brent, 1 Myl. & Cr. 104,* referred to. SWARNAMAYEE DEBI *v.* SECRETARY OF STATE FOR INDIA (1915) . . . . **I. L. R. 43 Calc. 625**

2. ——— *Letters of Administration—Executor not renouncing on citation must take out probate.—Letters of Administration can otherwise issue.* An executor called upon by citation to accept or renounce is clearly compellable, if he accepts, to take out probate within a limited time. If he does not do so, Letters of

PROBATE—*concld.*

Administration with copy of the will annexed may be granted to any competent applicant. KAVASJI SORABJI *v.* BAI DINBAI (1916)
I. L. R. 40 Bom. 666

PROBATE AND ADMINISTRATION ACT (V OF 1881).

——— **ss. 2, 4, 82, 92—**

See HINDU LAW—WILL.
I. L. R. 39 Mad. 365

——— **s. 4—**

See SETTLEMENT BY A HINDU WOMAN ON TRUSTS . **I. L. R. 40 Bom. 341**

——— **s. 55—**

See INTERROGATORIES.
I. L. R. 43 Calc. 300

——— **s. 83**—*Probate Case—Procedure.* S. 83 of the Probate and Administration Act read with O. XXIII, r. 3, Civil Prodedure Code, merely means that in a probate case the Civil Procedure Code so far as possible determines the procedure of the Court. These sections nowhere say that it is competent to the Court to allow the parties to divide the testator's property without proving the will. *Kunja Lal Choudhuri* v. *Kailash Chandra Chowdhury, 14 C. W. N. 1068,* and *Saroda Kanta Dass* v. *Gobinda Mohan Dass, 12 C. L. J. 91,* referred to. There can be no dismissal of a probate case in accordance with the terms of a petition of compromise between the propounder and objector. The main issue in such a case is whether or not the will has been proved and the only effect of a compromise is to reduce a contentious proceeding into one which is not contentious, but this does not absolve the Court from the task of their granting probate or refusing it. If a compromise has been made and the objector withdraws from the contest, the Court will grant probate in common form, but the Court cannot dismiss the case altogether and embody the terms of the compromise as if the decree was one capable of execution by him. JANAKBATI THAKURAIN *v.* GAJANAND (1916) . **20 C. W. N. 986**

——— **ss. 86, 90**—*Administrator's application to sell, granted against opposition—Appeal—Order if appealable as decree or irrespective of whether order decree or not—Interlocutory orders under the Act, if appealable.* A Hindu widow who had obtained Letters of Administration to the estate of her deceased husband applied under s. 90 of the Probate and Administration Act for permission to sell the dwelling-house for the purpose of satisfying debts. The application which was opposed by the reversioner having been granted, the latter appealed: *Held, per* D. CHATTERJEE, *J.*, that the order was a decree as defined in the Civil Procedure Code and was appealable as such *Quære*: Whether s. 86 of the Probate and Administration Act in making orders of the Probate Court "appealable under the rules contained in the Civil Procedure Code" means only that the procedure in such appeals would be as in appeals under the Civil Procedure Code. *Per* BEACH-

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*concld.*

——— **s. 86**—*concld.*

CROFT *J.*—An appeal lay under the terms of s. 86 of the Probate and Administration Act irrespective of whether the order was a decree or not. SARAT CHANDRA PAL *v.* BENODE KUMARI DASSI (1915) . . . . **20 C. W. N. 28**

——— **s. 90**—

See HINDU LAW—PARTITION.
I. L. R. 43 Calc. 1118

PROBATE PROCEEDINGS.

See INTERROGATORIES.
I. L. R. 43 Calc. 300

PROCEDURE.

See CIVIL PROCEDURE CODE (1908), O. XI, R. 21. . **I. L. R. 38 All. 5**

See CRIMINAL PROCEDURE CODE, S. 239.
I. L. R. 38 All. 311

See FALSE INFORMATION.
I. L. R. 43 Calc. 173

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), S. 17
I. L. R. 38 All. 425

See REVIVOR . **I. L. R. 43 Calc. 903**

PROFESSIONAL MISCONDUCT.

See UNPROFESSIONAL CONDUCT.

PROMISSORY NOTE.

——— **payable on demand**—

See LIMITATION ACT (IX OF 1908), Sch. I, ART. 80 . **I. L. R. 39 Mad. 129**

——— *By guardian of minor not signing as such, whether binding on minor's estate—Negotiable Instruments Act (XXVI of 1881), ss. 28 and 30, scope of.* A negotiable instrument executed by the guardian of a Hindu minor for purposes binding on the minor is enforceable against the minor's estate though the instrument was not signed by the executant in his capacity as guardian. The minor is not personally liable on the instrument. The case is governed by the principles of Hindu Law and ss. 28 and 30 of the Negotiable Instruments Act (XXVI of 1881) are not applicable. *Subramania Aiyar* v. *Arumuga Chetty, I. L. R. 26 Mad., 330,* followed. KRISHNA CHETTIAR *v.* NAGAMANI AMMAL (1915)
I. L. R. 39 Mad. 915

PROPERTY.

See ANCESTRAL PROPERTY.
I. L. R. 39 Mad. 930

——— **disposal of**—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 517.
I. L. R. 40 Bom. 186

PROPRIETARY TITLE.

——— **question of**—

See AGRA TENANCY ACT (II OF 1901), SS. 58, 177 (*e*) . **I. L. R. 38 All. 465**

PROSECUTION.

——— **duty of**—

See EVIDENCE ACT, 1872, S. 33.
I. L. R. 39 Mad. 449

——— **onus on**—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 256.
I. L. R. 39 Mad. 503

PROSECUTION WITNESSES.

——— **right of accused to recall and cross-examine**—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 256 **I. L. R. 39 Mad. 503**

PROSPECTIVE LEGISLATION.

See ASSESSMENT.
I. L. R. 43 Calc. 973

PROTECTION ORDER.

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), SS. 6, 8, 25, 38, 39 (*2*), (*a*), (*b*), (*c*), (*d*), (*f*), (*j*).
I. L. R. 40 Bom. 461.

PROVINCIAL INSOLVENCY ACT (III OF 1907).

——— **ss. 16, 47, 12 cl. (*3*), and 51**—*Insolvency Rules XXI, cl. (3) and V, cls. (2) and (3)—Civil Procedure Code (V of 1908), O. III, r. 3 and O. V, r. 12—Petition by creditor to adjudicate debtor an insolvent—Service of notice on agent, if sufficient—No notice sent by Court through registered post, effect of—Acts of insolvency committed by agent, if sufficient—Difference between English and Indian Law.* Where a petition was filed in a District Court by a creditor praying for an order to adjudicate his debtor an insolvent under s. 16 of the Provincial Insolvency Act and a notice of such petition was served on his local agent with a general power of attorney from the debtor who was residing outside the jurisdiction of the Court: *Held*, that the service of notice on the agent was in law sufficient though no notice was sent by the Court to the debtor through registered post. Effect of s. 47 of the Provincial Insolvency Act, and Rule XXI, clauses (*2*) and (*3*) and Rule V, clause (*2*) of the Insolvency Rules, considered. Under section 4 of the Provincial Insolvency Act, a debtor can be adjudicated an insolvent upon acts of insolvency committed by his agent. *In the matter of Brijmohun Dobay, 2. C. W. N. 306,* referred to. Under the English law, an act of bankruptcy must be a personal act or default of the debtor and could not be committed through an agent. *Ex parte Blain, 12 Ch. D. 522,* and *Cooke* v. *Charles A. Vogeler Co., [1901] A. C. 102.* Though, under s. 16 of the Provincial Insolvency Act, an adjudication of the debtor as an insolvent relates back to the date of the petition, the power of the debtor's agent under a general power of attorney ceases only with reference to his dealings with the debtor's property and the carrying on of the trade but not with reference to other acts of the agent and one of those acts must be taken to be to stave off bankruptcy orders against the

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*contd.*

——— **s. 16**—*concld.*

principal. *In re Pollit, [1893] 1 Q. B. 455,* referred to. KALIANJI *v.* THE BANK OF MADRAS (1915)
I. L. R. 39 Mad. 693

——— **ss. 20, 22**—*Properties advertised for sale by the Official Receiver as subject to mortgage—Change in the sale proclamation on the day of sale—Sale free of incumbrance—Irregularity vitiating the sale.* S. 22 of the Provincial Insolvency Act gives unfettered discretion to the Court to set aside a sale held by the Official Receiver if the change in the conditions of the sale-proclamation had the effect of preventing intending bidders from coming forward. *In re Bhukhandas, 7 Bom. L. R. 954,* distinguished. *Ex parte Lloyds, Re Peters, 47 L. T. 164.* A creditor who is entitled to a decision in respect of the sale of the property of the insolvent is a person aggrieved if the decision goes against him. *In re Laul Ex parte, Board of Trade, [1894] 2 Q. B. 805,* and *Ex parte Official Receiver, 19 Q. B. D. 174,* followed. TIRUVENKATACHARIAR *v.* THANYAYIAMMAL (1915)
I. L. R. 39 Mad. 479

——— **s. 37**—

See FRAUDULENT PREFERENCE.
I. L. R. 43 Calc. 640

——— *Insolvent—Effect of lease of occupancy holding granted shortly before filing petition of insolvency.* S. 37 of the Provincial Insolvency Act, 1907, has no application to the case of a lease granted for good consideration by an insolvent shortly before the filing of his petition, unless the object thereof is to give a preference to one creditor over the others. If the lease is found to be a merely colourable transaction, the insolvent still retaining possession of the property leased, it can be avoided and the property placed in the hands of the receiver; otherwise the rents should be paid to the receiver for the benefit of the creditors. The leased property being an occupancy holding: *Held,* that there was no reason for directing the surrender thereof to the zamindar. DESRAJ *v.* SAGAR MAL (1915)
I. L. R. 38 All. 37

——— **s. 46, cl.** (*3*)—*Appeal out of time—Deduction of time for obtaining copy, if permissible—Delay, if excusable—General Provisions of Limitation Act, if applicable—Limitation Act (IX of 1908), ss. 5, 12 and 29—Conversion of Appeal into Civil Revision Petition, when permissible—Order without notice to Official Receiver, illegal.* An appeal under s. 46, cl. (*3*) of the Provincial Insolvency Act, which was preferred to the High Court beyond the period of time fixed therein, is barred by limitation as the time requisite for obtaining a copy of the order appealed against cannot be deducted under that Act or under ss. 12 (*2*) and 29 of the Limitation Act. *Quære*: Whether the Court can excuse the delay under s. 5 of the Indian Limitation Act (IX of 1908). Case law on the subject considered. The High Court is competent to convert such an appeal into a

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*concld.*

——— **s. 46**—*concld.*

Civil Revision Petition under s. 15 of the Charter Act, and to set aside the order where the lower Court passed the order in favour of a creditor of an insolvent without the notice to the Official Receiver. *Abdulla* v. *Salaru, I. L. R. 18 All. 4,* followed. SIVARAMAYYA *v.* BHUJANGA RAO (1915)
I. L. R. 39 Mad. 593

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887).

——— **s. 17**—*Civil Procedure Code (1908), s. 24—Suit transferred from Subordinate Judge with Small Cause Court powers to Munsif—Ex parte decree—Procedure Held,* that s. 24 sub-cl. (*4*), of the Code of Civil Procedure contemplates a Court vested with the powers of a Court of Small Causes and that when a suit is transferred from that Court to another Court, the Court trying it is to be deemed a Court of Small Causes and its procedure is to be governed by the provisions of the Provincial Small Cause Courts Act. Therefore when such a suit is transferred to a Munsif from the Court of a Subordinate Judge vested with Small Cause Court powers and the former passes an *ex parte* decree in the suit, an application to have the *ex parte* decree set aside must be accompanied by a deposit of the amount of the decree or a security in respect of the amount as required by s. 17 of the Provincial Small Cause Courts Act, the provisions of which are mandatory. *Mangal Sen* v. *Rup Chand, I. L. R. 13 All. 324, Jagan Nath* v. *Chet Ram, I. L. R. 28 All. 470,* referred to. *Sarju Prasad* v. *Mahadeo Pande, I. L. R. 37 All. 470,* distinguished. CHHOTEY LAL *v.* LAKHMI CHAND MAGAN LAL (1916)
I. L. R. 38 All. 425

——— **s. 23** (*1*)—*Return of a plaint under—High Court's power of interference—S. 25, Provincial Small Cause Courts Act, s. 115, Civil Procedure Code (Act V of 1908), and s. 107, Government of India Act of 1915.* Where a Provincial Small Cause Court returned a plaint for presentation to a proper Court on the ground that the "suit involved a question of title which should be tried in a regular suit" and the plaintiff thereupon moved the High Court and obtained a rule, on a preliminary objection taken that the order under s. 23 (*1*) is not covered by s. 25 of the Provincial Small Cause Courts Act: *Held,* that there is a good deal of distinction between disposing of a case and deciding a case. A case is something less definite than a suit. The meaning of the word "decided" as held in *Subal Ram Dutt* v. *Jagadananda, 13 C. W. N. 403,* approved. *Umesh Chandra* v. *Rakhal Chandra, 15 C. W. N. 666,* referred to. Under s. 115 of the Civil Procedure Code, the High Court would only interfere if the question were one of jurisdiction. The Calcutta High Court's powers under the Charter Act have been exercised, with few exceptions, only in cases where jurisdiction has been exceeded or the Judge has ignorantly or perversely refused to exercise

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)—*concld.*

——— s. 23—*concld.*

or made only a colourable pretence at exercising jurisdiction vested in him by law. This limited power should be exercised only when irreparable injury would be caused to one of the litigants if matters were not set right. *Chandi Ray* v. *Kripal Ray, 15 C. W. N. 682*, and *Amajad Ali* v. *Ali Husain Johar, 15 C. W. N. 353*, referred to. S. 23 (*1*) of the Provincial Small Cause Courts Act is designed to meet cases in which a Small Cause Court Judge is satisfied that the question of title raised is so intricate that it should not be decided summarily, but in a Court in which the evidence is recorded in full and the decision is open to appeal, the matter is one of discretion, and where discretion is vested in a Court, it is not open to interference unless it has been exercised ignorantly or perversely. GANGA PRASAD *v.* NANDURAM (1916) **20 C. W. N. 1080**

——— s. 25—*Revision—Jurisdiction of High Court—Execution of decree—Limitation—Application to Court to take a step in aid of execution—Application for extension of time.* A *bonâ fide* application made by the decree-holder praying for extension of time for the purpose of ascertaining the whereabouts of his judgment-debtor is an application to take a step in aid of execution, and saves limitation. Where a Small Cause Court without any materials on the records gratuitously assumed that such an application presented by the decree-holder was not *bonâ fide*, and consequently that a subsequent application for the execution of the decree was time-barred, it was *held* that there was ground for interference by the High Court in revision. BHAIRON PRASAD *v.* AMINA BEGAM (1915 **I. L. R. 38 All. 690**

——— Sch. II, cls. 15, 16—

See SPECIFIC PERFORMANCE.
I. L. R. 43 Calc. 59

PROVISO.

——— object of—

See PRESS ACT (I OF 1910), S. 3 (*1*), PROVISO . . **I. L. R. 39 Mad. 1164**

PUBLIC GAMBLING ACT (III OF 1867).

——— ss. 1, 3—*"Place"—Bullock-run of disused well surrounded by low wall of loose bricks—"Common gaming house."* *Held*, that the lower-end of a bullock-run round which, in the shape of a semi-circle, was raised a low wall of loose bricks, was a 'place' within the meaning of the Public Gambling Act, 1867. *King-Emperor* v. *Fattoo Mahomed, Shermahomed, I. L. R. 37 Bom. 651*, followed. *Powell* v. *The Kempton Park Race Course Co., Ld., [1899] A. C. 143*, referred to. EMPEROR *v.* MIAN DIN (1915)
I. L. R. 38 All. 47

PUBLIC POLICY.

See TRAFFICKING IN OFFICES.
I. L. R. 43 Calc. 115

PUBLIC STREET.

See RAILWAY **L. R. 43 I. A. 310**

PUBLIC WAY.

See WAY.

——— obstruction to, by building a wall—

See PENAL CODE (ACT XLV OF 1860), SS. 147, 426, 447.
I. L. R. 39 Mad. 57

PUBLIC WORKS DEPARTMENT.

——— negligence of, servants of—

See TORT . **I. L. R. 39 Mad. 351**

PUBLICATION.

See COPYRIGHT. **I. L. R. 38 All. 484**

PUISNE MORTGAGEE.

——— rights of—

See CIVIL PROCEDURE CODE (1908), O. XXXIV, RR. 4 AND 5.
I. L. R. 38 All. 398

PURCHASE OF ARMS.

See FORGERY **I. L. R. 43 Calc. 421**

PURCHASER.

See PURCHASER OF A SHARE.

——— in Court auction—

See SUBSTITUTION OF PROPERTY AND SECURITY **I. L. R. 39 Mad. 283**

PURCHASER OF A SHARE.

See SALE FOR ARREARS OF REVENUE.
I. L. R. 43 Calc. 46

PURDANASHIN LADY.

1. ——— *Document executed by—Suit for cancellation on the ground of fraud.* The plaintiff, a *purdanashin* lady, executed a conveyance in favour of the defendant, the consideration for which consisted of money due on a mortgage bond previously given by her to the purchaser and an additional sum paid at the time of sale. It appeared that on the mortgage bond she wrote with her own hand "this bond executed by me is correct" and then signed her name. Similarly on the conveyance she wrote "this deed of sale which I have executed is true and correct and is admitted and ratified by me," and then affixed her signature. She brought a suit for cancellation of the conveyance on the ground of fraud. In the plaint it was alleged that the defendants who were agents of the plaintiff got the mortgage bond and the deed of sale signed by her without the document being read out and explained to her, that she did not get any independent legal advice in connection with the documents and did not get any consideration for them. In her deposition the plaintiff stated that she had put her signature on blank sheets, which had subsequently been filled up without her knowledge or consent by the defendant and turned into the mortgage bond and the sale deed: *Held*, that as the documents

PURDANASHIN LADY—*contd.*

undoubtedly bore the plaintiff's signature, the burden was upon her to establish that the recitals contained therein were untrue. BANSIRAM *v.* PANCHAMI DASI (1914) . **20 C. W. N. 638**

2. ——————— *Person trusted by her as manager and managing her properties, but acting adversely to her interests, acts of, if bind her—Fiduciary relationship—Betrayal of trust—Fraud by fiduciary, when may be condoned—Nullity—Sham arbitration proceedings and award—Limitation if applies to defence—Time for recovery to run from termination of relationship—Award if may be upheld as family arrangement.* *H*, a Hindu, who had separated from his brothers, acquired considerable property by money-lending and died in 1892 leaving a widow *K* and several daughters and a daughter's son *P* by a pre-deceased wife. *K*, who was not a woman of business, came under the influence of *F*, a separated brother of *H*, and *F* managed her properties and *K* believed that he was acting as her manager until he died in 1905. Shortly, after *H's* death, *F* in collusion with *P* got up a sham arbitration proceeding, which resulted in an award by which the properties left by *H* were divided up amongst the various members of the family, *K* receiving only a share. The true nature and effect of the proceedings were concealed from her and she was misled and betrayed by *F* and *P*, both of whom had interests adverse to her and were acting in their own interests. In a suit by another member of the family to enforce, in his right under the award, a mortgage effected by *F* from advances made out of properties left by *H*, *K* denied the plaintiff's title altogether and claimed the entire mortgage money in her right as the widow of *H*. The High Court held that the arbitration was a sham, that it had not been shown that *K* had any independent advice or understood the effect of the so-called award on her interests and believing that she never knowingly consented to the division of her husband's estate dismissed the suit. *Held*, by the Judicial Committee (without dissenting from the conclusions of the High Court), that from the death of *K's* husband, *F* stood to her in a fiduciary relationship which continued till he died and she was entitled to receive from him a full disclosure of all the affairs which concerned her. That *F* having betrayed the confidence *K* reposed in him, the question in the case was not whether *K* knew what she was doing, had done or proposed to do, but how her intention to act was produced: whether all that care and providence was placed round her as against those who advised her, which from their situation and relation with respect to her, they were bound to exert on her behalf. That fraud, such as there was in this case, could not be condoned unless there was full knowledge of the facts and of the rights arising out of those facts and the parties were at arm's length. *Huguenin* v. *Baseley, 14 Ves. Jun. 273*, and *Moxon* v. *Payne, 8 Ch. App. 881*, referred to. That the Indian Limitation Act was no bar to her defence, and even if she were suing to recover property of which she was deprived

PURDANASHIN LADY—*concld.*

by the award, time would not, under the circumstances of the case, begin to run against her until *F* died. That the award regarded as an award, or as a document embodying a family arrangement, was a nullity. SRI KISHAN LAL *v.* KASHMIRO (1916) . . . **20 C. W. N. 957**

Q

QADI.

See WAKF . **I. L. R. 43 Calc. 467**

R

RAILWAY.

——————— *Public Street—Street vested in Municipality—Power to Cross—Land Acquisition Act (I of 1894)—Indian Railways Act (IX of 1890), s. 7.* The Indian Railways Act, 1890, s. 7, as amended by s. 1 of Act IX of 1896, provides that, subject, in the case of immoveable property not belonging to the railway administration, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies, a railway administration may, for the purpose of constructing a railway, (*inter alia*) construct across any streets such lines of railway as the railway administration think proper; the powers conferred by the section are made subject to the control of the Governor General in Council. The respondents constructed lines of railway across a street vested by statute in the appellant Municipal Corporation without obtaining their consent and without taking proceedings under the Land Acquisition Act, 1894: *Held*, that the construction of the railway lines across the street was not an acquisition of immoveable property within the meaning of s. 7 of the Indian Railways Act, 1890, and that the respondents had power under that section, as amended, to lay the lines without obtaining the consent of the appellant corporation. BOMBAY CORPORATION *v.* GREAT INDIAN PENINSULA RAILWAY . **L. R. 43 I. A. 310**

RAILWAY RECEIPT.

See CONTRACT ACT (IX OF 1872), S. 103.. **I. L. R. 40 Bom. 630**

——— **endorsement of—**

See SALE OF GOODS. **L. R. 43 I. A. 164**

——— **not a delivery order—**

See CONTRACT ACT (IX OF 1872), S. 47. **I. L. R. 40 Bom. 517**

RAILWAYS ACT (IX OF 1890).

——— **ss. 3 (6), 77, 140**—*Railway administered by Government—Suit by consignee for price of goods consigned and mislaid by railway—Notice*

RAILWAYS ACT (IX OF 1890)—*contd.*

——— s. 3—*concld.*

to Traffic Manager and to Collector for Secretary of State, if sufficient—Limitation—Limitation Act (IX of 1908), Sch. I, Arts. 30, 31, 115. In the case of a railway administered by Government, notice under s. 77 of the Railways Act is [in view of the definition of the words "Railway Administration" in s. 3 (6) of the Act] effective, if served on Government, and s. 140 does not mean that the "Manager" is the only person on whom notice can be served, but that if notice is served on the Manager, it must be served on him in the manner provided in s. 140. *The Secretary of State* v. *Dipchand Poddar, I. L. R. 24 Calc. 306, Great Indian Peninsula Railway* v. *Chandra Bai, I. L. R. 28 All. 552, Janaki Dass* v. *The Bengal Nagpur Railway Company, 16 C. W. N. 356, Periannan Chetti* v. *South Indian Railway Company, I. L. R. 22 Mad. 137,* and *Nadiar Chand Saha* v. *Wood, I. L. R. 35 Calc. 194,* considered. *Per* D. CHATTERJEE, *J. Semble:* In the absence of evidence showing that the "Agent" of a railway administered by Governmment is the Manager, or that the "Traffic Manager" is not the Manager and regard being had to the rule printed and published in the Fare and Time Table of the Railway that "references regarding delay in transit to or loss of goods, parcels, luggage or other articles or claims for compensation and refunds should be addressed to the Traffic Manager," notice to the Traffic Manager may be considered sufficient under s. 140 of the Act. In a suit by consignors of goods which were not alleged to have been lost, but were found to have gone astray after they were delivered to the Railway, for recovery of their price with compensation, the defendant did not plead or prove any loss and on the other hand alleged that the goods had not been delivered at all, nor was there evidence when the goods were to be delivered: *Held, per* CURIAM, that neither Art. 30 nor Art. 31 applied, and (*Per* D. CHATTERJEE *J.*), that the suit was governed by Art. 115 of the 1st Schedule to the Limitation Act. *Mohan Singh Chawan* v. *Conder, I. L. R. 7 Bom. 478,* and *Danmull* v. *British India Steam Navigation Company, I. L. R. 12 Calc. 477,* referred to. RADHA SHAM BASAK *v.* THE SECRETARY OF STATE FOR INDIA (1916). **20 C. W. N. 790**

——— s. 7—

See RAILWAY . **L. R. 43 I. A. 310**

——— s. 72 (2) (*a*)—*Risk-note now to be signed in order to bind consignor.* The provision of s. 72, cl. (2), requiring risk-notes to be signed by or on behalf of the person sending or delivering goods to a Railway Administration, should be exactly carried out. Where the person who delivered the goods signed not his own name but the name of the owner of the goods, there was not a sufficient compliance with the requirements of s. 72, cl. (2). HOLMWOOD, *J.*—The person who signs the risk-note must write his own name either by his own hand or by the hand of an agent who must be disclosed and have authority. MAHABARSHA BANKAPORE *v.* SECRETARY OF STATE FOR INDIA (1915) . . . **20 C. W. N. 685**

RAILWAYS ACT (IX OF 1890)—*concld.*

——— s, 72—*concld.*

——— ss. 77, 140—*Notice on Claims-Superintendent, if notice on Agent—Suit for compensation for loss of goods consigned—Limitation—Limitation Act (IX of 1908), Sch. I, Art. 30.* In the absence of evidence to prove that the Claims-Superintendent was authorised by the Agent to receive notices on his behalf: *Held,* that a notice of claim served on the former was not served in compliance with the provisions, of s. 140 of the Railways Act. The law requires that the notice should be on the Agent and whether a particular officer is authorised by the Agent to receive such notice on his behalf is a question of fact that must be decided on evidence. *Woods* v. *Meher Ali, 13 C. W. N. 24,* distinguished. *Janaki Das* v. *The Bengal-Nagpur Railway Co., 16 C. W. N. 356, The East Indian Railway Co.* v. *Madho Lal, 17 C. W. N. 1134,* and *Radha Kissen* v. *The East Indian Railway Co., 19 C. W. N. 62,* referred to. Where the consignor sued a Railway Company for compensation for loss of goods alleging the same to have been due to the wilful negligence of or theft by its servants: *Held, (semble),* that the suit was governed by Art. 30 of the 1st Schedule to the Limitation Act. EAST INDIAN RY. CO. *v.* RAM AUTAR (1915) . **20 C. W. N. 696**

RAIYAT'S INTERESTS.

——— purchase of—

See LANDLORD AND TENANT.
I. L. R. 43 Calc. 164

RATEABLE DISTRIBUTION.

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 47, 73, 104.
I. L. R. 39 Mad. 570

See LIMITATION ACT (IX OF 1908), Sch. I, ARTS. 62, 120 . **I. L. R. 39 Mad. 62**

——— order for—

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 47, 73, 104.
I. L. R. 39 Mad. 570

RATING OF PROPERTY.

See ADEN SETTLEMENT REGULATION (VII OF 1900), S. 13.
I. L. R. 40 Bom. 446

RECEIVER.

See COMMON MANAGER.
I. L. R. 43 Calc. 986

See FRAUDULENT PREFERENCE.
I. L. R. 43 Calc. 640

See OFFICIAL RECEIVER.

——— application against the legal representatives of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XL, R. 4.
I. L. R. 39 Mad. 584

RECEIVER—*concld.*

———— death of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XL, R. 4.
I. L. R. 39 Mad. 584

———— misappropriation by —

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XL, R. 4.
I. L. R. 39 Mad. 584

1. ———— ———— ———— *Sale by Receiver—Civil Procedure Code (Act V of 1908), O. XL, r. 1—Receiver, authority of, to sell property and execute the conveyance including share of infant defendant—Practice—Trustees Act (XV of 1866), ss. 8, 20 and 32.* In a partition suit in which a Receiver is authorized to sell properties, there can be no difficulty in directing him to convey the properties. Under O. XL, r. 1, cl. (*d*) of the Code, the Court may confer on a Receiver all such powers for the realisation of properties and the execution of documents as the owner has. The Receiver may be, therefore, directed to execute a conveyance including the share of an infant defendant. In all sales whether by the Court or under the Court or by direction of the Court out of Court, the purchaser is bound to satisfy himself of the value, quantity, and title of the thing sold, just as much as if he were purchasing the same under a private contract. The sale certificate does not transfer the title ; it is evidence of the transfer. *Minatoonnessa Bibee* v. *Khatoonnessa Bibee, I. L. R. 21 Calc. 479, Golam Hossein Cassim Ariff* v. *Fatima Begum, 16 C. W. N. 394,* and *Davis* v. *Ingram, [1897] 1 Ch. 477,* referred to. BASIR ALI *v.* HAFIZ NAZIR ALI (1915).
I. L. R. 43 Calc. 124

———— *Order refusing to remove Receiver, if appealable—Resignation of one of two joint Receivers, if terminates order appointing Receiver.* No appeal lies against an order refusing to remove a Receiver who has already been appointed. Where two persons were appointed joint Receivers to an estate, the order appointing them did not come to an end on the resignation of one of them so as to leave the estate without a Receiver and without the protection for which a Receiver is, in fact, appointed. EASTERN MORTGAGE AND AGENCY CO., LTD. *v.* PREMANANDA SAHA (1914) . . . **20 C. W. N. 789**

RECORDS, POWER TO CALL FOR.

———— *Special Tribunal—Calcutta Improvement Act (Beng. V of 1911), s. 71, cl. (c)—Land Acquisition Act (I of 1894), s. 53—Practice.* The power to call for records is a power which is undoubtedly inherent in the Judge of a Land Acquisition Court and consequently in the Special Tribunal constituted under the Calcutta Improvement Act. *Golap Coomary Dassee* v. *Raja Sundar Narain Deo, 4 C. L. R. 36,* followed. NARESH CHANDRA BOSE *v.* HIRA LAL BOSE (1915).
I. L. R. 43 Calc. 239

RECTIFICATION.

See MISTAKE . **I. L. R. 43 Calc. 217**

RECTIFICATION OF REGISTER.

———— of shareholders—

See COMPANIES ACT (VI OF 1882), SS. 58, 147 . . **I. L. R. 40 Bom. 134**

REDEMPTION.

See EQUITY OF REDEMPTION.

See LIMITATION ACT (IX OF 1908), SCH. 1, ARTS. 140, 141.
I. L. R. 40 Bom. 239

See MORTGAGE . **I. L. R. 38 All. 148, 540**

———— suit for—

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), SS. 3 (*w*), 12, 13 . . **I. L. R. 40 Bom. 655**

See MADRAS CIVIL COURTS ACT (III OF 1873), SS. 12, 13.
I. L. R. 39 Mad. 447

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 60, 67—93.
I. L. R. 39 Mad. 896

———— *Civil Procedure Code (1877), s. 583—Decree for redemption reversed on appeal—Restitution—Jurisdiction of Court to which application for restitution is made to award mesne profits which are not given by Appellate Court decree—Suit to redeem.* A mortgagor sued for redemption of a usufructuary mortgage and obtained a decree from the Subordinate Judge, under which, on payment of the sum decreed to the mortgagee, he was put in possession of the mortgaged property; but the mortgagee appealed to the High Court, which increased the amount payable on redemption by a sum which the mortgagor failed to pay, and the mortgagee thereupon applied to the Subordinate Judge for possession and for mesne profits for the period during which he had been out of possession. *Held,* (upholding the decisions of the Courts in India), that the Subordinate Judge had power under s. 583 of the Code of Civil Procedure, 1877, to award mesne profits, although they had not been expressly given by the decree of the High Court. If the decree was wrong the parties aggrieved had their remedy either by appeal to the High Court or by an application for revision. The proceedings taken under the decree of the Subordinate Judge, culminating in the sale at which the mortgagee purported to purchase the equity of redemption, were valid, and the appellant an assignee of the rights of the mortgagor, was held not entitled to redeem. PARBHU DAYAL *v.* MAKBUL AHMAD (1915).
I. L. R. 38 All. 163

REDEMPTION SUIT.

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).
I. L. R. 40 Bom. 483

REGISTERED COMPANY.

See LIQUIDATOR . **I. L. R. 43 Calc. 586**

REGISTRATION.

See CIVIL PROCEDURE CODE (1908), O. XXIII, R. 3 . **I. L. R. 38 All. 75**

See EVIDENCE ACT (I OF 1872) S. 70. **I. L. R. 38 All. 1**

See REGISTRATION ACT.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 54 **I. L. R. 40 Bom. 313**

REGISTRATION ACT (XVI OF 1908).

——— **s. 17—**

See CIVIL PROCEDURE CODE (1908), O. XXIII, R. 3. **I. L. R. 38 All. 75**

——— **ss. 17, 49**—*Registration—Petition to Revenue Court in mutation proceedings—Compromise—Family settlement.* A separated Hindu created two usufructuary mortgages on portions of his estate, and then died leaving a widow and a daughter. The widow held possession for her life-time and created a third usufructuary mortgage. She died. Her daughter laid claim to the estate and applied for entry of her name in the revenue records. M, one of the reversioners, contested her application, urging that her father was joint with him and not separate. The parties came to terms, orally. The daughter agreed to give up her claim; M, in return, agreed to take the estate, to pay off the mortgages and to pay a certain sum to the daughter. They two then filed a joint petition in which it was stated that the parties had come to terms. This statement in the petition was followed by another on behalf of the daughter that as she had given up her claim to the estate she had no objection to mutation of names being made in favour of M. The Revenue Court's order was that mutation was to be made according to that compromise. M, to secure to the daughter the payment of the money which he had promised to pay, executed two bonds in favour of her sister's husband; but he never paid the money due thereon; on the contrary he managed to get the bonds back and kept them. Some time afterwards the daughter sued to recover possession of the property in dispute. *Held*, that in the circumstances the plaintiff was entitled to a decree conditioned on her paying the amount due on the mortgages. JAGRANI *v.* BISHESHAR DUBE (1916) . **I. L. R. 38 All. 366**

——— **s. 35**—*Registration of deed of gift—Death of donor—Execution admitted by donee—Registration, if proper.* The donee under a deed of gift is an "assign" of the executant within the meaning of s. 35 of the Registration Act and may, when the donor is dead, admit the execution of the deed before the Registering Officer. AKAHOY CHANDRA MAJHI *v.* MANMATHA NATH CHATTERJEE (1916) . . **20 C. W. N. 1345**

——— **s. 50—**

See SPECIFIC RELIEF ACT (I OF 1877), S. 27 . . **I. L. R. 38 All. 184**

REGISTRATION ACT (XVI OF 1908)—*concld*

——— **s. 60—**

See EVIDENCE ACT (I OF 1872), S. 70. **I. L. R. 38 All. 1**

——— **ss. 82, 83**—*Permission of registration officer a necessary preliminary to a prosecution. Held*, that the permission referred to in s. 83 of the Indian Registration Act, 1908, is a necessary condition precedent to the prosecution of any person for an offence mentioned in s. 82 of the Act. *King-Emperor* v. *Jiwan, 27 Indian Cases, 208*, referred to. EMPEROR *v.* HUSAIN KHAN (1916) . . . . **I. L. R. 38 All. 354**

REGISTRATION OFFICER.

See REGISTRATION ACT (XVI OF 1908), SS. 82, 83 . **I. L. R. 38 All. 354**

REGULATIONS.

——— **1778—I—**

See CONSTRUCTION OF DOCUMENT. **I. L. R. 38 All. 570**

——— **1799—V—**

——— **s. 5**—*Order if can be made, when no regular suit has been brought by the claimants.* When no regular suit has been brought by the persons who claim the property dealt with by the Court, an order under s. 5 of Reg. V of 1799 is *ultra vires*. BALIA KOER *v.* BANDRAM SAHU (1914) . . . . **20 C. W. N. 823**

——— **1803—XXXI—s. 6—**

See CONSTRUCTION OF DOCUMENT. **I. L. R. 38 All. 230**

——— **1806—XVII—**

See CONSTRUCTION OF DOCUMENT. **I. L. R. 38 All. 570**

See MORTGAGE . **I. L. R. 38 All. 97**

RE-HEARING.

——— **appellant not entitled to—**

See APPEAL, PARTIES TO AN. **I. L. R. 39 Mad. 386**

RELEASE.

See LIQUIDATOR . **I. L. R. 43 Calc. 586**

See STAMP ACT (II OF 1899), SCH. I, ART. 55 . **I. L. R. 38 All. 56**

——— **of some of joint judgment-debtors—**

See JOINT JUDGMENT-DEBTORS. **I. L. R. 39 Mad. 548**

RELIGIOUS ENDOWMENTS ACT (XX OF 1863).

——— *Change of village from one district to another, for revenue purposes—Religious institution in the village—Power of original committee of the original district to control the institution—No power for the committee of the new district to appoint trustees.* The Religious Endowments Act (XX of 1863), contemplates the creation of division or district committees once for all

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—*contd.*

soon after the passing of the Act to take the place of the Board of Revenue and the local agents referred to in Regulation VII of 1817. It is only the committee that is originally appointed in that behalf or its successor that can exercise jurisdiction over a particular religious institution and any order of Government transferring a certain village in which a particular religious institution is situated from one district to another for purposes of revenue administration does not deprive the original temple committee of its powers over the institution (such as appointing trustees for the same) or enable the committee of the new district to which the village is transferred to exercise any power over the institution. RANGAPPA *v.* BHIMAPPA (1915).

I. L. R. 39 Mad. 949

——— s. 3—*Suit for scheme for a temple falling under s. 3—Civil Procedure Code (Act V of 1908), s. 92, jurisdiction of Courts to frame a scheme under—Temple committee, powers of.* Ever since 1842 when the Board of Revenue handed over the management of the temple of Srirangam to certain trustees, one trustee was chosen hereditarily every year from a certain family in the locality called the "Sthalathars" and two other trustees were appointed till 1863 by the Board and later on by the temple committee formed under the Religious Endowments Act (XX of 1863). In several litigations connected with the temple, the temple was treated as one falling under s. 3 of Act XX of 1863. *Held*, that the temple was one falling under s. 3 and not under s. 4 and was thus subject to the control of the temple committee. Though the Courts cannot interfere with the statutory powers conferred upon the members of the temple committee so as to deprive them of their statutory functions, yet the Court has jurisdiction to frame a scheme under s. 92, Civil Procedure Code (Act V of 1908) in respect even of a temple subject to the control of the temple committee, and introduce changes in its administration which the committee is not legally competent to introduce and which are desirable and necessary to meet the altered circumstances of the time. Considering that the actual management of the temple must vest in the trustees subject to the statutory control of the committee, their Lordships held it undesirable in framing a scheme to introduce, as the lower Court did, a new body of people called a Board of Control over the trustees and hence abolished the same. In the result their Lordships framed a scheme for the temple providing among other things for (*a*) the appointment of two additional trustees for the better management of the temple, (*b*) the tenure of office of the trustees appointed being only for five years, (*c*) the preparation of annual budget and audit of temple accounts and (*d*) the appointment of a cashier under the trustees. *Per Curiam*:—The powers of the committee or any other statutory body do not become suspended by the occurrence of a

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—*concld.*

——— s. 3—*concld.*

vacancy among its members. Powers of a temple committee considered. *Santhalva* v. *Manjanna Shetty, I. L. R. 34 Mad. 1*, dissented from. English and Indian cases reviewed. SITHARAMA CHETTY *v.* SIR S. SUBRAHMANIA IYER (1916).

I. L. R. 39 Mad. 700

RELIGIOUS INSTITUTION.

——— transfer of—

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863) . **I. L. R. 39 Mad. 949**

RELINQUISHMENT.

See FAMILY SETTLEMENT.

I. L. R. 38 All. 335

REMAND.

See AGRA TENANCY ACT (II OF 1901), SS. 182, 183 . **I. L. R. 38 All. 181**

See AGRA TENANCY ACT (II OF 1901), S. 202 . . **I. L. R. 38 All. 533**

See CIVIL PROCEDURE CODE (1908), S. 109 . . **I. L. R. 38 All. 150**

——— by Appellate Court—

See COSTS . **I. L. R. 39 Mad. 476**

1. ——— *Remand of case on issue only raised on second appeal—Case decided by lower Courts on issues of fact—Civil Procedure Code, 1882, s. 584—Absence of ground of law to support second appeal—Costs—Suit to eject a paik in service of zamindar holding under kabuliat with Government—Onus of proving land as chowkidari chakran—Right to dismise paik.* The plaintiff, a zamindar under a kabuliat with the Government made by his predecessor in title in 1801, sued to eject from a jaghir within his zamindari a paik in his service whom he had dismissed from his service with notice to quit. The Secretary of State for India, now sole respondent, was also made a defendant, as the Government disputed the zamindar's right to dismiss the paik. The plaintiff's case was that there were two classes of paiks, the Government paiks who performed police duties and who could be dismissed only by the Government, and that class alone came within the terms of the kabuliat, and private paiks who performed services personal to the zamindar, and that the paik in suit belonged to the latter class and the zamindar was therefore entitled to dismiss him. Both the Subordinate Judge and the District Court held that the paik defendant did not come within the terms of the kabuliat, and found concurrently on the facts in favour of the plaintiff's contentions, but the District Judge gave no specific reasons for his decision. The High Court admitted a second appeal by the respondent on an issue not previously raised in the case, "whether the land in suit had been excluded from assessment at the settlement in 1792 as being appropriated for the maintenance of

REMAND—*contd.*

paiks performing police duties, and whilst agreeing with the lower Courts on the construction of the kabuliat, ignored the findings of fact, and remanded the appeal for the trial of the fresh issue, making the plaintiff who had succeeded, pay all the costs then incurred. *Held*, that the High Court in second appeal was by s. 584 of the Code of Civil Procedure, 1882, then in force, bound by the findings of fact of the District Judge who "had considered the evidence and saw no reason for differing from the findings of the Subordinate Judge." The High Court could therefore only allow the appeal on a ground of law, and on the only question of law that Court agreed with the Court below. Even if it were competent to the High Court to remit a case for rehearing on an issue not raised in the pleadings or even suggested in the Courts below, it ought only to be done in an exceptional case for good cause shown, and on payment by the party appealing of all costs. The respondent did not suggest he was taken by surprise or had discovered fresh evidence of which he was previously unaware. The omission to raise the issue early in the case appeared to be deliberate, the onus of proving it was on the respondent, and there was little, if any, evidence to support it. The appeal was consequently allowed. RAM CHANDRA BHANJ DEO *v.* SECRETARY OF STATE FOR INDIA (1916).

I. L. R. 43 Calc. 1104

2. ——— *Remand on a preliminary point—Powers of lower Appellate Court to reverse and remand—Civil Procedure Code (Act V of 1908), s. 107, sub-s. (1), cl. (b), sub-s. (2); O. XLI, r. 23.* As the body of the Code creates jurisdiction (while the rules indicate the mode in which it is to be exercised), it is expressed in more general terms, but has to be read in conjunction with the more particular provisions of the rules. S. 107, sub-s. (*1*), cl. (*b*) of the Code is subject to the conditions and limitations prescribed by the rules: and in the case of a lower Appellate Court, the power of reversal and remand is limited to the position described in r. 23, O. XLI. MANI MOHAN MANDAL *v.* RAMTARAN MANDAL (1915).

I. L. R. 43 Calc. 148

3. ——— *Remand after addition of parties by Appellate Court—Amendment of plaint—Whether whole case remanded in consequence—Civil Procedure Code (Act V of 1908), s. 107, O. XLI, rr. 23, 25.* There are other possible cases of remand which are not included in O. XLI. *Nabin Chandra Tripati* v. *Prankrishna De, I. L. R. 41 Calc. 108*, distinguished. In the Code of Civil Procedure, 1908, the Legislature has given the power of amendment to the Court of Appeal and, as a necessary outcome, it has the power of remanding the whole case when an amendment of plaint is granted and when parties are added. The general provision in s. 107 for a remand is not governed or limited by O. XLI alone, but is subject to such conditions and limitations as may be prescribed in the rules and orders, the amendment of a plaint and addition of parties

REMAND—*contd.*

in a Court of appeal being among them. UZIR ALI SARDAR *v.* SAVAI BEHARA (1916).

I. L. R. 43 Calc. 938

4. ——— *Order of appeal Court directing Court of first instance to remit findings on issues not tried—Decision on other issues in the remand order if binds Judge or his successor at final hearing—Decision, if preliminary decree or interlocutory order—Civil Procedure Code (Act V of 1890), O. XLI, rr. 23, 25.* Where a suit for recovery of possession in which the defendant besides denying plaintiffs' title set up certain pleas in bar (limitation, etc.), was dismissed by the first Court on the merits, but the lower Appellate Court finding in favour of the plaintiff on the merits, the case was remanded to the first Court for finding on the issues in bar which had not been tried by the first Court: *Held*, that upon receipt of the findings of the first Court on these issues, the lower Appellate Court was not bound to reconsider its findings on the merits and this whether the officer before whom the appeal finally came for hearing was the same or another officer. *Per* RICHARDSON *J.*—An opinion incidentally or provisionally expressed in a remanding judgment would not amount to a final adjudication so as to conclude the parties, but an adjudication by the remanding Judge would bind him or his successor at the final hearing. One test which may be suggested for the purpose of determining whether such an adjudication is or is not final and conclusive so far as it goes is whether it does or does not amount to a preliminary decree. *Semble:* The remand order in this case amounted to a preliminary decree in so far as it disposed of the merits of the case. *Per* MULLICK, *J.*—It seems to be well settled that though it is open to a Court to revise after remand interlocutory decisions which were made either by itself or by an officer of co-ordinate jurisdiction, yet as a matter of practice a Court will not and ought not to do so. When, however, the interlocutory decision amounts to a preliminary decree within the meaning of s. 2 of the Civil Procedure Code, the Court is incompetent to revise that decree till it is duly set aside or amended according to law. That the decision on merits contained in the remand order did not amount to a preliminary decree. HIRA LAL PAL *v.* ETBAR MANDAL (1915) . . **20 C. W. N. 43**

5. ——— *Remand order by Appellate Court without retaining case on file—Whole case if open before Court to which case remanded—Limitation of scope of appeal remanded by High Court.* In strict law a remand made by an Appellate Court without retaining the appeal in its own file necessarily reopens the whole case and the Court of Appeal to which the case is remanded is bound to hear the appeal upon the judgment of the Court of first instance and on nothing else. But the High Court in the exercise of its powers of supervision under the Charter rightly assumes in certain cases authority to limit the scope of certain appeals remanded to the lower Court without keeping them on its own file. But when-

REMAND—*concld.*

ever this is done it is absolutely essential that the High Court should lay down clearly without any possibility of mistake that it did intend to limit the scope of the appeal to certain specified questions. KARTICK CHANDRA DAS *v.* SATYA NIDHI GHOSAL (1915) . **20 C. W. N. 584**

REMOVAL OF STRUCTURES.

See MUNICIPAL LAW.
L. R. 43 I. A. 243

RENT.

See RENT DECREE.

See RENT, SUIT FOR.

See U. P. LAND REVENUE ACT (III OF 1901), SS. 56, 86.
I. L. R. 38 All. 286

——— **non-payment of—**

See MADRAS ESTATES LAND ACT (I OF 1908), S. 189 . **I. L. R. 39 Mad. 60**

——— **payment of, for sixty years—**

See MADRAS ESTATES LAND ACT (I OF 1908), S. 13, CL. (*3*).
I. L. R. 39 Mad. 84

——— **suit for—**

See LESSOR AND LESSEE.
I. L. R. 39 Mad. 939

RENT DECREE.

See SALE . . **I. L. R. 43 Calc. 263**

——— *Evidence—Previous ex-parte rent decree, admissibility of, as evidence of relationship between parties—Presumption of continuance thereof—Evidence Act (I of 1872), s. 114, illus. (d).* A previous *ex parte* rent decree (between the same parties) is not merely an item of evidence, but is conclusive as to the relationship between the parties at that time. Its value becomes more apparent since the terms of s. 114, illus. (*d*) of the Evidence Act permit the Court to make a presumption as to the continuance of the state of things. HIRANMOY KUMAR SAHA *v.* RAMJAN ALI DEWAN (1915).
I. L. R. 43 Calc. 170

RENT, SUIT FOR.

——— *Title Paramount, dispossession by—Onus of proof —Apportionment of rent—Evidence Act (I of 1872), s. 102.* Where a tenant is sued for rent, he can set up eviction by title paramount to that of his lessor as an answer; and if evicted from part of the land, an apportionment of the rent may take place; but the onus is on the lessor to show what is the fair rent of the lands out of which the tenant was not evicted. *Gopanund Jha* v. *Lalla Govinda Prosad, 12 W. R. 109*, referred to. SURENDRA NARAIN ROY CHOWDHURY *v.* DINA NATH BOSE (1915).
I. L. R. 43 Calc. 554

RENUNCIATION.

See PROBATE . **I. L. R. 40 Bom. 666**

REPRESENTATION.

See CONTRACT . **I. L. R. 39 Mad. 509**

RESCUE FROM LAWFUL CUSTODY.

——— *Lawful apprehension, resistance to—Opium—Person selling article as opium which turns out not to be the same—Arrest and detention of such person—Legality of arrest—Escape from such arrest—Opium Act (I of 1878), s. 15—Penal Code (Act XLV of 1860), ss. 224 and 225.* Where a person purports to sell an article as opium which afterwards turns out not to be the same and he is arrested but escapes with the aid of others:—*Held*, that his arrest and detention are lawful under s. 15 of the Opium Act (I of 1878), and that his conviction under s. 224 and that of the others under s. 225 of the Penal Code are legal. It is an offence for a person to escape from custody, after he has been lawfully arrested on a charge of having committed an offence, although he may not be convicted of such latter offence. *Deo Sahay Lal* v. *Queen-Empress, I. L. R. 28 Calc. 253*, approved. MOHAMMED KAZI *v.* EMPEROR (1916).
I. L. R. 43 Calc. 1161

RESIDENCE.

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R. 43 Calc. 153

RESIDENT AT ADEN.

See ADEN SETTLEMENT REGULATION (VII OF 1900), S. 13.
I. L. R. 40 Bom. 446

RES JUDICATA.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 11 .
I. L. R. 40 Bom. 210, 614, 662, 679

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 11 . **I. L. R. 39 Mad. 1202**

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 16 . **I. L. R. 38 All. 289**

See HINDU LAW—ALIENATION BY WIDOW.
I. L. R. 43 Calc. 417

See SARANJAM . **I. L. R. 40 Bom. 606**

See WAKF, VALIDITY OF.
I. L. R. 43 Calc. 158

——— **rule of—**

See DECLARATORY DECREE, SUIT FOR.
I. L. R. 43 Calc. 694

1. ——— *Civil Procedure Code (Act V of 1908), s. 11—Sale of Khoti lands on the basis that they are alienable—Subsequent suit between the parties on the allegation that the lands were inalienable—Khoti Settlement Act (Bombay Act I of 1880), s. 9.* Certain Khoti lands were sold in execution proceedings between the parties on the footing that they were alienable, and purchased by the defendant. The plaintiff then filed a suit to recover possession of the lands on the allegation that the lands being occupancy lands their sale was invalid under s. 9 of the Khoti Settlement Act, 1880. *Held*, that the plaintiff's

RES JUDICATA—*concld.*

allegation was barred by *res judicata* inasmuch as the sale in execution decided inferentially as between the plaintiff and the defendant that the lands sold were not occupancy lands. KASHINATH KRISHNA *v.* DHONDSHET (1916).
I. L. R. 40 Bom. 675

2. ——— *Rule of res judicata not a mere technical rule.* The application of the rule of *res judicata* by the Courts in India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law. SHEOPARSAN SINGH *v.* RAMNANDAN PRASHAD NARAYAN SINGH (1916).
20 C. W. N. 738
I. L. R. 43 Calc. 694

RESPONDENT.

——— death of—

See APPEAL, PARTIES TO AN.
I. L. R. 39 Mad. 386

RESTITUTION.

See CIVIL PROCEDURE CODE (1908), S. 144 . . **I. L. R. 38 All. 240**

See REDEMPTION **I. L. R. 38 All. 163**

RESULTING TRUST.

See SETTLEMENT BY A HINDU WOMAN ON TRUSTS . **I. L. R. 40 Bom. 341**

RESUMPTION.

See ASSESSMENT **I. L. R. 43 Calc. 973**

RETRIAL

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 233, 421, 537.
I. L. R. 39 Mad. 527

REVENUE.

——— attachment of arrears of —

See CONTRACT ACT (IX OF 1872), SS. 69, 70 . . **I. L. R. 39 Mad. 795**

——— covenant to pay—

See CONSTRUCTION OF DOCUMENT.
I. L. R. 38 All. 230

REVENUE COURT.

See MADRAS ESTATES LAND ACT (I OF 1908), SS. 189, ETC.
I. L. R. 39 Mad. 239

REVENUE OFFICER.

See JURISDICTION **I. L. R. 43 Calc. 136**

REVENUE SALE.

See SALE FOR ARREARS OF REVENUE.
I. L. R. 43 Calc. 779

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 65 (*c*).
I. L. R. 39 Mad. 959

REVENUE SALE LAW (ACT XI OF 1859).

See SALE FOR ARREARS OF REVENUE.

——— s. 37 (*4*)—*purchaser at revenue sale, if may eject lakherajdar from land which has been planted or built upon—Incumbrance, how annulled.*

REVENUE SALE LAW (ACT XI OF 1859)—*concld.*

——— s. 37—*concld.*

S. 37 of the Revenue Sale Law does not protect land held without payment of rent upon which dwelling-houses, manufactories or other permanent buildings have been erected or whereon gardens, plantations, etc., have been made. The assignee or transferee of the auction purchaser at a Revenue sale is entitled to exercise the rights of a purchaser. It is not essential on the part of the auction purchaser or his assignee who seeks to annul an incumbrance to give a formal written notice to avoid it. All that is necessary is to notify to the incumbrancer by some unequivocal act the intention to annul. KRISHNA KALYANI DASI *v.* R. BRAUNFELD (1915).
20 C. W. N. 1028

——— s. 54—

See SALE FOR ARREARS OF REVENUE.
I. L. R. 43 Calc. 46

REVERSIONARY INTEREST.

See HINDU LAW—PARTITION.
I. L. R. 43 Calc. 1118

——— attachment of—

See HINDU LAW—WIDOW.
I. L. R. 39 Mad. 565

REVERSIONER.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 1 (*3*).
I. L. R. 39 Mad. 987

See DECLARATORY DECREE, SUIT FOR.
I. L. R. 43 Calc. 694

See HINDU LAW—REVERSIONER.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 91 . **I. L. R. 40 Bom. 51**

——— suit by—

See LIMITATION ACT (IX OF 1908), SCH. 1, ARTS. 140, 141.
I. L. R. 40 Bom. 239

REVIEW.

See APPEAL . **I. L. R. 43 Calc. 178**

See ARBITRATION.
I. L. R. 43 Calc. 290

See REVIEW OF JUDGMENT.

——— High Courts power of—

See CRIMINAL PROCEDURE CODE, S. 369.
I. L. R. 38 All. 134

——— *Review of High Court judgment—Application for review presented to Court presided over by Chief Justice under special circumstances—Deputy Registrar certifying application not in order—Application, if must be presented within seven days of return of application with such certificate.* The application for review was properly presented to the Court presided over by the Chief Justice, as there was no time after the application was put in order to present it to the

REVIEW—*concld.*

Bench which had disposed of the appeal in the first instance, one of them having retired from the Court some days before and the other having gone away on furlough two days after that date. R. 4 of Chap. XI of the Appellate Side Rules was intended to apply to the case where the Deputy Registrar gives a certificate that the review application was in order and not to cases where the certificate is to the effect that the proceedings were not in order. GANGADHAR KARMAKAR *v.* SHEKHAR BASINI DASYA (1916).
20 C. W. N. 967

REVIEW OF JUDGMENT.

See CIVIL PROCEDURE CODE (1908), O. XLVIII, R. 9.
I. L. R. 38 All. 280

See CRIMINAL PROCEDURE CODE, S. 369.
I. L. R. 38 All. 134

REVISION.

See COMPOSITION OF OFFENCE.
I. L. R. 43 Calc. 1143

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 435, 439, 133.
I. L. R. 39 Mad. 537

See CRIMINAL PROCEDURE CODE, S. 476.
I. L. R. 38 All. 695

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), S. 25.
I. L. R. 38 All. 690

——— in petition by private parties—

See CRIMINAL PROCEDURE CODE (ACT OF 1898), SS. 439, 422, 423.
I. L. R. 39 Mad. 505

——— power of the High Court to interfere in—

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 115 **I. L. R. 39 Mad. 195**

REVISIONAL JURISDICTION OF HIGH COURT.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 115 **I. L. R. 40 Bom. 509**

See SANCTION FOR PROSECUTION.
I. L. R. 43 Calc. 597

REVIVOR.

——— Procedure and practice —Execution of decree—Decree barred by limitation —Application for transmission—Notice—Order on the notice, effect of—Master, authority of—Court, Jurisdiction of—Civil Procedure Code (Act XIV of 1882), ss. 223, 224, 235, 248 and 249—Belchambers' Rules and Orders, r. 370—Limitation Acts (XV of 1877) Sch. II, Arts. 179 and 180; (IX of 1908) Sch. I, Arts. 182 and 183. On the 21st May 1896, the plaintiffs obtained a money decree in the High Court against the defendant. This decree was subsequently transmitted to the District Court of Purnea for execution, but was returned by that Court as unsatisfied. Thereafter, another application for execution by arrest and imprisonment of the defendant was made to

REVIVOR—*con'd.*

the High Court on its Original Side and the returnable date of the order on this application was fixed finally for the 12th July, 1901. No further steps were again taken until the 1st June, 1908, when the plaintiffs made another application to the High Court on the tabular form provided under s. 235 of the Code of Civil Procedure, 1882, for execution of their said decree by transmission of the same to the District Court of Murshidabad and attachment of the defendant's property situate within the jurisdiction of the latter Court, and the Registrar directed notice to issue on the defendant under s. 248 (*a*) of the Code. On the 30th June, 1908, the defendant not having appeared to show cause, the Master ordered execution to issue as prayed. Again no steps were taken until the 18th January, 1915, when a fresh application was made to the High Court for execution by attachment of No. 147, Cotton Street, in Calcutta. The defendant thereupon applied to set aside this attachment, but the High Court refused his application as barred. On appeal to the High Court in its Appellate Jurisdiction reference was made by this Court to a Full Bench. *Held*, that the application of the 1st June, 1908, and the order of the 30th June, 1908, did not constitute a revivor within Art. 183 of the 1st Schedule of the Limitation Act, 1908. *Per* SANDERSON, *C. J.* The substance and not the form of the matter must be looked at; and considered from that point of view the application was for the transmission of a certified copy of a decree together with a certificate of *non*-satisfaction and no more, and the order made in substance was that the application should be granted. The notice which was issued under s. 948 was inapplicable to the proceedings in question. The question whether a decree was capable of execution would have to be determined by the Court itself under s. 249 of the Civil Procedure Code. The Registrar was not clothed with authority to decide such a question as arises in this case, *viz.*, whether the decree was barred by the Statute of Limitation. R. 370 in Belchambers' Rules and Orders was not consistent with the scheme of the Code of 1882. These rules must be read as modified by the Civil Procedure Code, 1882, under which the application in this case was made, and the notice issued and the order made did not operate as a revivor within the meaning of Article 183 of the Limitation Act, Schedule I. The fact that the word "revivor" is used in art. 183, instead of the different matters specified in Art. 182 being set out again or referred to in Art. 183 as might have been done, shows that something different to such matters was intended. Further, the conditions dealt with by the two clauses are essentially different and the periods of limitation vary materially. *Per* WOODROFFE, *J.* An order for transmission as such is not an order on an application for execution, though it is an order on an application in execution. It is a proceeding taken with a view to further action by way of execution elsewhereon which action unless previously determined

REVIVOR—*concld.*

the question of the right to execute the decree is decided. If the Registrar had power to issue as a "*quasi*-judicial Act" notice under s. 248, he had no power to determine judicially that the decree was alive had the debtor contested the point. The Judge must have done that and the fact that the debtor did not appear on the notice, cannot give the order passed that judicial character which is necessary for an order operating as revivor. The last two words of the Order ("Let execution issue as prayed") make the order operative as one for transmission of the decree; for this was what was asked. *Per* MOOKERJEE *J.* S. 230 makes it plain that the application for execution must be presented to the Court to which the decree has been transmitted for execution, while the explanation to s. 248 shows that the notice required by that section must, where the decree has been transmitted, be issued by the Court to which the decree has been sent for execution. Consequently, the issue of the notice in this case under s. 248, on the basis of the application for transmission of the decree, was not in conformity with the Code of 1882 which was in force at the time. Upon the application for transmission of the decree under s. 223, a notice under s. 248 could not properly be issued; such notice though issued did not by itself operate as revivor of the decree and there was not in fact, and could not in law be, such a determination by the Master under s. 249 as would operate to revive the decree. CHUTTERPUT SINGH *v.* SAIT SUMARI MULL (1916) . **I. L. R. 43 Calc. 903**

REVOCATION.

See HINDU LAW—WILL.
I. L. R. 39 Mad. 107

RHANDERIAS.

See MAHOMEDAN LAW—ENDOWMENT.
I. L. R. 43 Calc. 1085

RIGHT OF REPLY.

——— *Exhibiting documents' not part of the record, on behalf of the accused during the cross-examination of the prosecution witnesses—Doctrine of surprise—Criminal Procedure Code (Act V of 1898), ss. 289 and 292.* S. 292 of the Criminal Procedure Code is not to be read independently but in connection with s. 289, and gives a right of reply only when the accused, or any of them, adduces evidence after the case for the prosecution has concluded. The prosecution has no right of reply when the counsel for the accused has, during the cross-examination of a prosecution witness and before the close of the case for the Crown, put certain letters, which do not form part of the record, to such witness, and then tendered and had them admitted in evidence. The question whether the prosecution has been taken by surprise is not the correct test under s. 292 of the Code. EMPEROR *v.* SREENATH MAHAPATRA (1916) **I. L. R. 43 Calc. 426**

RIGHT OF SUIT.

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 47, 73, 104.
I. L. R. 39 Mad. 570

RIGHT OF SUIT—*concld.*

See EXECUTION SALE.
I. L. R. 39 Mad. 803

See LESSOR AND LESSEE.
I. L. R. 39 Mad. 1042

See RIGHT TO SUE.

1. ——— *Civil Court—Jurisdiction—Order of forfeiture passed by Magistrate—Criminal Procedure Code (Act V of 1898), ss. 523, 524—Disposal of property—Sale-proceeds credited to Government—Suit to recover the amount.* The plaintiff's house was searched in connection with a dacoity and certain property was attached on suspicion. On a proclamation being issued by the 2nd Class Magistrate under s. 523 (2) of the Code of Criminal Procedure, 1898, the plaintiff appeared before the Magistrate to establish his claim to the property. The claim was disallowed and an order was passed under s. 524 of the Criminal Procedure Code, for sale of the property. The sale-proceeds having been credited to Government the plaintiff brought a suit for the recovery of the amount. The defendant pleaded that a Civil Court had no jurisdiction to entertain the suit. The Assistant Judge decided the suit in plaintiff's favour. The District Judge, on appeal, dismissed the suit holding that as under s. 524 the property was at the disposal of Government, Government had an absolute right to it; and that the special provisions relating to investigation of claims to property mentioned in s. 523 made the decision of the Magistrate final and deprived the person aggrieved of any right of action. On appeal to the High Court:—*Held*, reversing the decree, that the order of the Magistrate disposing of the property under s. 524 of the Criminal Procedure Code was not final and that it did not deprive the plaintiff of his right to establish his claim in a Civil Court. *Queen Empress* v. *Tribhovan Manekchand, I. L. R. 9 Bom. 131*, followed. *Secretary of State for India in Council* v. *Vakhatsangji Meghrajji, I. L. R. 19 Bom. 668*, discussed. WASAPPA *v.* SECRETARY OF STATE FOR INDIA (1915) . . . **I. L. R. 40 Bom. 200**

2. ——— *Co-owners—Suit in ejectment against trespasser—Suit by one co-owner alone—Other co-owners, not parties—Suit, if maintainable—Local inspection by Judge—Judgment based solely on such inspection, if valid—Civil Procedure Code (Act V of 1908), O. XXVI, r. 9, Civil Procedure Code (Act XIV of 1882), s. 392.* One of several co-owners can maintain an action in ejectment against a trespasser without joining the other co-owners as parties to the action. A judgment should not be based solely on the result of the personal local inspection made by the judge. This rule applies to cases instituted under the new Code of Civil Procedure (Act V of 1908) as under the old Code (Act XIV of 1882). SHUTARI *v.* THE MAGNESITE SYNDICATE, LIMITED (1915) . **I. L. R. 34 Mad. 501**

RIGHT TO SUE.

——— accrual of—

See LIMITATION . **L. R. 43 I. A. 113**

RIGHT TO SUE—*concld.*

——— survival of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 2, CL. (*11*); O. XXII, R. 1. **I. L. R. 39 Mad. 382**

ROAD.

See MUNICIPALITY. **I. L. R. 43 Calc. 130**

——— making and maintenance of—

See TORT . . **I. L. R. 39 Mad. 351**

RULES OF COURT.

——— C. VII, r. 8—

See CRIMINAL PROCEDURE CODE, S. 369. **I. L. R. 38 All. 134**

RYOTWARI LANDOWNER.

See MADRAS ESTATES LAND ACT (I OF 1908), S. 189. **I. L. R. 39 Mad. 239**

RYOTWARI LANDS.

——— acquisition of, by Government—

See MADRAS ESTATES LAND ACT (I OF 1908), SS. 6, SUB-S. (*6*), 8. **I. L. R. 39 Mad. 944**

RYOTWARI TENURE.

See MADRAS ESTATES LAND ACT (I OF 1908), SS. 6, SUB-S. (*6*), 8. **I. L. R. 39 Mad. 944**

S

SADALWAR AND MATHIRI KASUVU.

See MADRAS ESTATES LAND ACT (I OF 1908), S. 13, CL. (*3*). **I. L. R. 39 Mad. 84**

SALE.

See CONTRACT ACT (IX OF 1872), S. 74. **I. L. R. 38 All. 52**

See RECEIVER . **I. L. R. 43 Calc. 124**

See SALE IN EXECUTION OF DECREE.

See SALE FOR ARREARS OF REVENUE.

See SALE OF GOODS.

See SPECIFIC RELIEF ACT (I OF 1877), S. 27. . . **I. L. R. 38 All. 184**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 40 . **I. L. R. 40 Bom. 498**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 55 (*4*) (*b*). **I. L. R. 38 All. 254**

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 60, 67—93. **I. L. R. 39 Mad. 896**

——— application to set aside—

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 90 . **I. L. R. 38 All. 358**

SALE—*contd.*

——— free of incumbrance—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), SS. 20, 22. **I. L. R. 39 Mad. 479**

——— in execution of a decree—

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 90 . **I. L. R. 38 All. 358**

——— properties advertised for, by the Official Receiver as subject to mortgage—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), SS. 20 AND 22. **I. L. R. 39 Mad. 479**

——— setting aside of—

See DEPOSIT IN COURT. **I. L. R. 43 Calc. 100**

1. ——— *Execution of rent-decree—Encumbrances—Bengal Tenancy Act (VIII of 1885), ss. 159, 163 to 167—Decree for arrears of rent—Sale under the Bengal Tenancy Act, effect of—Purchase by landlord.* Where a tenure is sold under the provisions of the Bengal Tenancy Act in execution of a decree for arrears of rent, and the procedure prescribed in the Act has been observed, the result therein described as follows, namely, the purchaser becomes entitled to annul all encumbrances other than registered and notified encumbrances; the consequence of the sale does not depend upon the amount of the bid offered by the successful purchaser; it is independent of the value of the bid. S. 165 of the Act was enacted solely for the benefit of the decree-holder; if the bid is not sufficient to satisfy his decree and costs, it entitles him to have the property sold with power to annul all encumbrances; but it is not obligatory upon him to adopt this extreme measure, and he is not in peril if he decides not to pursue this special remedy. *Banbihari Kapur* v. *Khetra Pal Singh Roy, I. L. R. 38 Calc. 923*, not followed. SALIMULLAH *v.* RAHENUDDI (1915). **I. L. R. 43 Calc. 263**

2. ——— *Immoveable property—Transfer of Property Act (IV of 1882) s. 54—District Board, sale by—Incorporated Company—Suit, dismissal of—Contract, recission of—Waiver—Respondent—Cross-objections—Civil Procedure Code (Act V of 1908) O. XLI, rr. 22 (3), 33—Corporation, duty of, when it receives money under an illegal or ultra vires agreement.* S. 54 of the Transfer of Property Act provides that a sale of tangible immoveable property of the value of Rs. 100 and upwards can be made only by a registered instrument. Title to land, therefore, cannot pass by a mere admission when the statute requires a deed. *Jadu Nath* v. *Rup Lal, I. L. R. 33 Calc. 967, Dharam Chand* v. *Manji Sahu, 16 C. L. J. 436, Narak Lall* v. *Mangoo Lal, 22 C. L. J. 380*, referred to. *Hemendra Nath Mukerjee* v. *Kumar Nath Roy, I. L. R. 32 Calc. 169*, distinguished. The effect of rules 93 and 98 of the Statutory Rules, made by the Lieutenant-Governor on the

SALE—*contd.*

15th December 1885 under s. 138 (*d*) of Beng. Act III of 1885, is that no immoveable property vested in a District Board can be sold, except with the previous approval of the Local Government and except by an instrument under the common seal signed by the Chairman and by two members of the Board. It is well settled principle of interpretation that Courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it, although such interpretation has not by any means a controlling effect upon the Courts and may be disregarded for cogent and persuasive reasons. *Baleshwar* v. *Bhagirathi, I. L. R. 35 Calc. 701*, referred to. When a public body or a Company is established by statute or is incorporated for special purposes only and is altogether the creature of Statute Law the prescriptions for its acts and contracts are imperative and essential to their validity. *Ward* v. *Beck, 13 C. B. (N. S.) 668, Stapleton* v. *Haymen, 2 H. & C. 918, The Andalusian, L. R. 3 P. D. 182, Le Feuvre* v. *Miller, 8 E. & B. 321, Cope* v. *Thames Haven, 3 Exch. 841, Diggle* v. *London and Blackwell Ry., 5 Exch. 442, Frend* v. *Dennett, 4 C. B. (N. S.) 576, Cornwall Mining Co.* v. *Bennett, 5 H. & N. 423, Irish Peat Co.* v. *Phillips, 1 B. & S. 598, Bottomley's Case, 16 Ch. D. 681*, and *In Re Gifford and Bury Town Council, 20 Q. B. D. 368*, referred to. A suit need not be dismissed merely because the authority for its institutions such as a certificate under the Pensions Act, 1861, or s. 78 of the Land Registration Act or s. 60 of the Bengal Tenancy Act or s. 4 of the Succession Certificate Act is not produced with the plaint. But this principle has no application to a case where the plaintiff at the date of the institution of the suit had no title at all. *Sarat Chandra* v. *Apurba Krishna, 14 C. L. J. 55*, referred to. One contract is rescinded by another between the same parties, when the latter is inconsistent with and renders impossible the performance of the former; but, if, though they differ in terms, their legal effect is the same, the second is merely a ratification of the first and the two must be construed together; where the new contract is consistent with the continuance of the former one, it has no effect unless and until it is performed. *Hunt* v. *South Eastern Railway Co., 45 L. J. C. P. 87, Dodd* v. *Churton, [1897] 1 Q. B. 562, Patmore* v. *Colburn, 1. Cr. M. & R. 65, Thornhill* v. *Neats, 8 C. B. (N. S.) 831*, referred to. But where parties enter into a contract which if valid, would have the effect, by implication of rescinding a former contract and it turns out that the second transaction cannot operate as the parties intended, it does not have the effect, by implication, of affecting their rights in respect to the former transaction. *Noble* v. *Ward, 4 H. & C. 149; L. R. 1 Esch. 177, Doe dem. Biddulp* v. *Poole, 11 Q. B. 713*, referred to. Where the question is, whether the one party is set free by the action of the other, the real matter for consideration is whether the acts or conduct of the one do or do not amount to an intimation of an

SALE—*contd.*

intention to abandon and altogether to refuse performance of the contract. The true question is whether the acts and conduct of the party evince an intention no longer to be bound by the contract. *Mersey Steel and Iron Co.* v. *Naylor Benzon and Co., 9 App. Cas. 434, General Bill-posting Co.* v. *Atkinson, [1908] A. C. 118*, referred to. The Court requires as clear evidence of the waiver as of the existence of the contract itself, and will not act upon less. *Carolan* v. *Brabazon, 3 J. & L. 200*, referred to. Where a corporation receives money or property under an agreement, which turns out to be *ultra vires*, or illegal, it is not entitled to retain the money. The obligation to do justice rests upon all persons, natural and artificial; if one obtains the money or property of others, without authority, the law, independently of express contract, will compel restitution or compensation. *Chapleo* v. *Brunswick Building Society, 6 Q. B. D. 696*, referred to. As an ordinary rule a respondent in an appeal is not entitled to urge cross-objections except as against the appellant. But rule 22 (*3*) of O. XLI of the Code of 1908 has materially altered the pre-existing law by the substitution of the words "party who may be affected by such objection" for the word "appellant" contained in s. 561 (*3*) of the Code of 1882. Further, rule 33 of O. XLI has conferred wide discretionary powers on the Court of Appeal to alter the decree of the Court below as the case may require. MATHURA MOHAN SAHA *v.* RAM KUMAR SAHA (1915)

I. L. R. 43 Calc. 790

3. ——————— *Contract of sale —Exception clause excusing delay due to late shipment—Failure of seller to deliver on due date—Tender on a subsequent date—Onus on party relying on exception—Shipment to be shown to be unavoidably delayed—"Shipment," meaning of—Measure of damages.* Defendant contracted with plaintiff to deliver to him in Calcutta 50 tons of Rangoon rice in June 1909, and another 50 tons in July 1909. A clause in the contract provided that no objection was to be raised by the plaintiff in case of the delivery of the goods being delayed by reason of the non-arrival in time of the steamer carrying the goods on account of the shallowness of water at Diamond Harbour, damage to the steam-engine, accidents of the sea and other causes not under human control, as also owing to late shipment at Rangoon. The June consignment was not tendered by defendant until the 9th of July and the July consignment until the 3rd August. The market rates on both these days were the same as those on 30th June and 31st July respectively. The plaintiff refused the tenders on both days and sued for damages, being the difference between the contract price and the market price on the said two dates. Defendant relying on the clause relating to late shipment pleaded that under the contract there was no particular due date of delivery. *Held*, that the defendant could not rely on that clause unless he was able to prove that the circumstances which led to delay in shipment were not attributable

SALE—*concld.*

to his negligence. *Dunn* v. *Bucknall*, [*1902*] *2 K. B. 614, 621*, followed. That the burden of establishing that his case was covered by the exception on which he relied was on the defendant. *Sandeman and Sons* v. *Tyzack and Branfoot Steamship Co., Ld.*, [*1913*] *A. C. 680, 689*, followed. The term "shipment" in the contract included not merely the loading of goods on board the ship but also the starting of the ship. That as soon as the contract had been broken, the obligation of the purchaser to take delivery of the goods vanished and he was not bound to accept the goods when they were delivered and that the right measure of damages was the difference between the contract price and the market price on the dates of delivery originally agreed upon by the parties. *Grenon* v. *Lachmi Narain, I. L. R. 24 Calc. 8*, relied on. KALI KANTA SHAHA *v.* ISMAIL (1914).
20 C. W. N. 159

4. ——— *Suit by purchaser under registered kobala against defendant in possession—Plaintiff, if has to prove passing of consideration—Recital in deed admitting receipt of consideration, value of—Second appeal—Onus.* A plaintiff has to prove his title when a defendant in possession pleads he is only a *benamidar* but he shows a *primâ facie* title by producing and proving a conveyance which usually contains a recital of the receipt of consideration. The onus in such a case is on the defendant to show non-payment of consideration. The fact that the defendant is in possession is an important element to be taken into consideration in determining whether the transaction is *benami*. But there is no presumption in favour of *benami* even where the defendant is in possession. Where the lower Appellate Court held that the plaintiff's purchase was *benami* being influenced by the erroneous view that the onus was on the plaintiff, though it relied also on the fact that the defendant was in possession, the finding was reversed in second appeal and the case was sent back for re-hearing. A recital in a deed of sale admitting the receipt of consideration is evidence, though not conclusive, against the vendor. DURGA CHARAN CHANDER *v.* THE KHARDA CO., LD. (1915) . . **20 C. W. N. 254**

SALE ABSOLUTE.

See INCUMBRANCE
I. L. R. 43 Calc. 558

SALE DEED.

See CONSTRUCTION OF DEED
I. L. R. 40 Bom. 74

See DEKKAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), SS. 3, CL. (*y*) AND 10A . **I. L. R. 40 Bom. 397**

See SUIT FOR CANCELLATION OF DOCUMENT . **I. L. R. 38 All. 232**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 54 . **I. L. R. 40 Bom. 313**

——— **mistake in—**

See EVIDENCE ACT (I OF 1872), S. 92, CL. (*a*) . . **I. L. R. 39 Mad. 792**

SALE FOR ARREARS OF REVENUE.

See REVENUE SALE LAW.

1. ——— *Purchaser of a share—Meaning of the words, "the purchaser shall not acquire any rights which were not possessed by the previous owner or owners"—Revenue Sale Law (Act XI of 1859), s. 54.* At a sale under s. 13 of Act XI of 1859 it is not the rights of the recorded proprietor that pass, but the share itself. The policy of the revenue law is to protect the revenue and make the share on which the revenue is assessed available for the arrears of revenue due upon it. *Debi Das Chowdhuri* v. *Bipro Charan Ghosal, I. L. R 22 Calc. 641*, followed. *Banalata Dasi* v. *Monmotha Nath Goswami, 11 C. W. N. 821, Kumar Kalanand Singh* v. *Syed Sarafat Hussain, 12 C. W. N. 528, Rahimuddi Munshi* v. *Nalini Kanta Lahiri, 13 C. W. N. 407, Bilas Chandra Mukerjee* v. *Akshoy Kumar Das, 16 C. W. N. 587, Bhawani Koer* v. *Mathura Prasad, 7 C. L. J. 1, Annoda Prosad Ghose* v. *Rajendra Kumar Ghose, I. L. R. 29 Calc. 223*, and *Gungadeen Misser* v. *Kheeroo Mundal, 14 B. L. R. 170*, referred to. KHEMESH CHANDRA RAKSHIT *v.* ABDUL HAMID SIKDAR (1915) . . **I. L. R. 43 Calc. 46**

2. ——— *Adverse possession—Limitation—Incumbrance—Limitation Act (IX of 1908), Sch. I, Arts. 121, 142, 144—Assam Land and Revenue Regulation (I of 1886), ss. 70, 71.* In a suit for *khas* possession and mesne profits in respect of certain lands purchased by the plaintiffs at a sale for arrears of Government revenue, the defendants contended that they had been in adverse possession of the said lands for a long time, that their occupation was in the nature of an incumbrance and that the plaintiffs were not entitled to avoid the same:—*Held*, that the interest which the defendants acquired was an incumbrance within the meaning of Art. 121 and the suit was barred by limitation. *Karmi Khan* v. *Brojo Nath Das, I. L. R. 22 Calc. 244*, and *Nuffer Chandra Pal Chowdhury* v. *Rajendra Lal Goswami, I. L. R. 25 Calc. 167*, approved. *Kumar Kalanand Singh* v. *Syed Sarafat Hossein, 12 C. W. N. 528*, and *Rahimuddi Munshi* v. *Nalini Kanta Lahiri, 13 C. W. N. 407*, distinguished. PRASANNA KUMAR DUTT *v.* JNANENDRA KUMAR DUTT (1915).
I. L. R. 43 Calc. 779

SALE IN EXECUTION OF DECREE.

See BENGAL TENANCY ACT (VIII OF 1885), SS. 85, 159.
I. L. R. 43 Calc. 178

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 89.
I. L. R. 40 Bom. 557

1. ——— *Sale certificate, purchaser at, suit for rent by, after registration, under Land Registration Act—Decree obtained therein, sale in execution of—Purchase by decree-holder—Certificate sale subsequently cancelled—Rent-decree and sale, if thereby reversed. A*, having purchased property at a sale under the Public Demands

SALE OF EXECUTION OF DECREE—*contd.*

Recovery Act, on 7th September 1908, sold it to *B*, who duly obtained a sale certificate from the revenue authorities, was placed in possession and had his name registered under the Land Registration Act. *B* then sued the tenant on the property for rent and obtained an *ex parte* decree in execution whereof the tenure was sold and purchased by the decree-holder himself on 20th November 1909. The sale under the Public Demands Recovery Act was cancelled on 29th March 1910 on the ground that no notice had been served under s. 109 of the Act and that the proceedings were invalid and inoperative in consequence: *Held*, that the rent-decree and sale thereunder which were duly and regularly had at the instance of a stranger who had no concern with the irregularities in connection with the certificate sale were not affected by the reversal of the certificate sale. NAGENDRA NATH BOSE *v.* PARBATI CHARAN (1914) . . . . . **20 C. W. N. 819**

2. ——— *Sale in execution, if holds good when ex parte decree set aside where property has been assigned by decree-holder purchaser to stranger—Decree subsequently passed if validates sale—Court's power to take notice of facts which have occurred since institution of proceedings.* The assignee from the decree-holder who has purchased property in execution of his own decree is in no better position than his assignor, and the sale is set aside when the decree is set aside even when the decree-holder has sold the property to a stranger. *Satis Chandra* v. *Rameswari, 20 C. W. N. 665*, followed. As soon as an *ex parte* decree is set aside, the sale, where the decree-holder is the purchaser, falls through and is not validated by a fresh decree subsequently made. *Set Umedmal* v. *Srinath Roy, I. L. R. 27 Calc. 810*; *s. c. 4 C. W. N. 692, Hazari Mull* v. *Janaki Prasad, 6 C. L. J. 92*, and *Ram Yead* v. *Bindeswari, 6 C. L. J. 102*, distinguished, the decree in those cases though temporarily set aside having been ultimately maintained. It is well-settled that the Court may, in order to shorten litigation or to do complete justice between the parties, take notice of events which have happened since the institution of the proceedings and may afford relief to the parties on the basis of the altered conditions. ABDUL RAHAMAN *v.* SARAFAT ALI (1915). **20 C. W. N. 667**

3. ——— *Sale in execution, when to be set aside when decree set aside—Decree-holder purchaser—Purchase by stranger from latter before decree set aside—Equity.* The Court as a matter of policy has a tender regard for honest purchasers at sales held in execution of its decree, though the decree may be subsequently set aside, where those purchasers were not parties to the suit and the decree had not been passed without jurisdiction. But the same measure of protection is not extended to purchasers who are themselves the decree-holders nor can purchasers from such decree-holders claim that the Court owes them any duty or to be within the policy which prompts the extension of protection to strangers, since

SALE OF EXECUTION OF DECREE—*concld.*

they have bought from one whose title is liable to be defeated. *Sheik Ismail Rowther* v. *Rajab Rowther, I. L. R. 30 Mad. 295*, dissented from. SATISH CHANDRA GHOSE *v.* RAMESSARI DASSI (1914) . . . . **20 C. W. N. 665**

4. ——— *Execution, if void or voidable when decree fraudulent—Suit to set aside decree barred by limitation—Sale, if may be vacated.* A sale in execution of a fraudulent decree is not a void but a voidable sale; till vacated by an appropriate proceeding, the rights created thereby are effective. Such a sale cannot be set aside without setting aside the decree; consequently where the right to have the decree set aside as fraudulent has become barred by limitation, no decree can be made setting aside the sale only as made in execution of a fraudulent decree. *Ram Narayan* v. *Shew Bhunjan, I. L. R. 27 Calc. 197*, distinguished. RAJ KUMAR SARKEL *v.* RAJ KUMAR MALI (1915) . . . . **20 C. W. N. 659**

5. ——— *Sale of putni, in execution of decree for arrears of rent—Purchaser, if liable for arrears previous to confirmation of sale.* The plaintiff purchased a *putni* taluq at a sale held in execution of a decree for arrears of rent due thereon. Some of the *putnidars* applied to set aside the sale and while the proceedings for setting aside the sale were pending the zemindar brought the suit against the recorded *putnidars* for arrears of rent subsequent to the period covered by the decree in execution of which the sale was held at which the plaintiffs purchased the *taluq*. The plaintiffs were made parties to this suit which was decreed and in execution of the decree the *putni* was put up for sale and the plaintiffs whose purchase at the previous sale had been by that time finally confirmed deposited the decretal amount and saved the *putni* from sale. *Held*, that in the absence of anything to denote the contrary, a sale of a tenure held in execution of a decree for its own arrears of rent passes it free from liability for previous arrears and the plaintiffs were not liable for the arrears of rent for the period to the date of confirmation of sale at which they purchased the *putni*. MATHURA MOHAN SAHA *v.* NABIN CHANDRA DUTT (1916) **20 C. W. N. 749**

SALE OF GOODS.

See CONTRACT. . **I. L. R. 43 Calc. 77**

See CONTRACT ACT (IX OF 1872), S. 103. **I. L. R. 40 Bom. 630**

1. ——— *Contract for forward monthly deliveries—Construction—Anticipatory breach—Measure of damages.* In a contract, dated June 4th, for the purchase of 300 tons of Java sugar, it was stipulated "shipments to be made by steamers during July to December 1914 . . . . . the agreement to be construed as a separate contract in respect of each shipment." Without giving any delivery, on the 18th August the sellers repudiated the contract. In an action for breach of contract brought by the buyer on the 26th August claiming damages

SALE OF GOODS—*contd.*

in respect of the whole contract, for 300 tons :— *Held*, that on the true construction of the contract, the buyer had the right to demand delivery of the goods by separate shipments spread over the months from July to December, and the true measure of damages was the aggregate of the differences between the contract price and the market price at the appointed times of delivery in each month. *Roper* v. *Johnson, L. R. 8 C. P. 167, Wertheim* v. *Chicontimi Pulp Co., [1911] A. C. 301, Frost* v. *Knight, L. R. 7 Ex. 111*, and *Brown* v. *Muller, L. R. 7 Ex. 319*, referred to. *Per* MOOKERJEE *J.* In the circumstances of the case, the instalments must be deemed to have been intended to be distributed rateably over the period appointed for the delivery of the whole quantity of the goods. *Calamnius* v. *Dowlais Iron Co., 47 L. J. Q. B. 575, Coddington* v. *Paleologo, L. R. 2 Ex. 193*, referred to. *Thornton* v. *Simpson, 6 Taunt. 556, Tarling* v. *O'Riordan, 2 L. R. Ir. 82, Colonial Insurance Co. of New Zealand* v. *Adelaide Marine Insurance Co., L. R. 12 A. C. 128*, cited by MOOKERJEE, *J.* It being found that the principle applied by the Court of first instance in assessing damages was erroneous, but that on the application of the proper principle the damages to be allowed would be larger, on the defendant's appeal the Court declined to disturb the judgment or order a remand. BILASIRAM THAKURDAS *v.* GUBBAY (1915) . **I. L. R. 43 Calc. 305**

2. ———————— *C. I. F. Contract—Insurance of goods against war risk without buyer's instruction—Buyer not obliged to pay for such insurance—Payments against documents—Bill of lading must be tendered—Bill of lading, what is a—War—Government proclamations prohibiting trading with the enemy—Effect of proclamations on contract, goods shipped in enemy port—Performance of contract becomes illegal.* On the 9th June 1914 the defendants purchased from the plaintiff, 5 tons round copper bottoms c. i. f. Mahomerah, July shipment, and agreed to pay for the said copper in Bombay on being tendered the Bills of lading and other documents in respect thereof. The copper was shipped on board the S. S. "Tangistan" on or about the 28th July 1914, and the plaintiff obtained relative bills of lading and insured the goods against ordinary marine risks. On the 5th August in consequence of war having broken out between Great Britain and Germany the plaintiff's agent in England, although not instructed to do so by the defendants, insured the copper against war risks and paid 10 per cent. premium. The documents arrived in Bombay on the 7th September whereupon the plaintiff tendered them to the defendants and demanded payment of the invoice price of the goods including the abovementioned extra premium of 10 per cent. in respect of insurance against war risks. The defendants refused to pay the amount demanded on the ground that they were not liable to pay the aforesaid extra premium. *Held*, that in the absence of express instructions from the defendants to effect insurance against war risks, the defendants were

SALE OF GOODS—*concld.*

not liable to pay the extra premium. By another contract, dated 17th July 1914, the defendants purchased from the plaintiff 900 bags of sugar c. i. f. Mahomerah, July shipment and agreed to pay for the said sugar in Bombay on being tendered the Bills of lading and other documents in respect thereof. The plaintiff got the sugar shipped at Hamburg on the S.S. Nicomedia on the 28th July 1914 and obtained, as he alleged, relative Bills of lading in respect thereof and he insured the goods. Subsequently after the documents relating to the said sugar had arrived in Bombay the plaintiff presented them to the defendants and demanded payment but the defendants refused to accept the document or to pay the money on the grounds firstly, that by reason of the state of war which existed and the Government proclamations prohibiting trade with the enemy, performance of the contract would be impossible, and secondly, that the documents which the plaintiff presented as Bills of lading were not Bills of lading and were not therefore the proper documents to be tendered in accordance with the terms of a c. i. f. contract. *Held*, that in view of the Government proclamations the tender of the shipping documents was not a valid tender and that acceptance of and payment against the said documents would be a violation of the said proclamation. *Duncan, Fox & Co.* v. *Schrempft and Bonke, [1915] 1 K. B. 365*, followed. *Held*, also, that a Bill of lading as known to merchants is a receipt for goods actually delivered over and shipped on board the ship named therein and signed by the Captain or his representative, and that the documents tendered to the defendants as Bills of lading were not Bills of lading but mere receipts for warehousing or shipment. As such they were no evidence of any shipment and a purchaser under a c. i. f. contract, if tendered such a receipt, would be entitled to ask for a Bill of lading, for he is not obliged to pay upon proof merely that the goods had arrived at the port of departure. NISSIM ISAAC BEKHOR *v.* HAJI SULTANALI SHASTARY AND CO. (1915).

I. L. R. 40 Bom. 11

SALE OF LAND.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 55 (*4*).

I. L. R. 39 Mad. 997

SALE PROCLAMATION.

See PROVINCIAL INSOLVENCY ACT (III OF 1907), SS. 20, 22.

I. L. R. 39 Mad. 479

SALE WITH OPTION OR RE-PURCHASE.

See CONSTRUCTION OF DOCUMENT.

I. L. R. 40 Bom. 378

SANCTION FOR COMPOSITION.

———— **in revision, incompetency of High Court to—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 439.

I. L. R. 39 Mad. 604

SANCTION FOR PROSECUTION.

See CRIMINAL PROCEDURE CODE, S. 195. (*1*) (*c*). . . **I. L. R. 38 All. 169**

1. ——————— *Revisional jurisdiction of High Court over Presidency Small Cause Court—Civil Procedure Code (Act V of 1908), s. 115—Criminal Procedure Code (Act V of 1898), s. 195—Stage in a judicial proceeding, what is—"Oath"—"Delay."* A Judge of the Presidency Small Cause Court, Calcutta, had dismissed six applications for sanction to prosecute the plaintiffs for having made false claims. On an application to the High Court under s. 115 of the Civil Procedure Code to set aside the orders:—*Held*, that under s. 195 of the Criminal Procedure Code the High Court is the superior Court to the Presidency Small Cause Court, and has power to deal with the order which was made by that Court. *Held*, also, that an application for leave to sue is a stage in a judicial proceeding, where such leave is necessary to give the Court jurisdiction. *Held*, also, that the delay in making the application for sanction to prosecute had been satisfactorily explained, and was not in the circumstances such as to prejudice the plaintiffs. BUDHU LAL *v.* CHATTU GOPE (1915). **I. L. R. 43 Calc. 597**

2. ——————— *Information to the police reported false—No subsequent application to the Magistrate for judicial investigation—Order of Magistrate calling on informant to prove case, and examination of witnesses—Grant of sanction—Necessity of sanction when false charge made to the police but not followed by complaint—"Complaint"—Power of Magistrate to direct prosecution himself in such case—"Judicial proceeding"—Criminal Procedure Code (Act V of 1898), ss. 4 (h), 195 (1) (b), 476.* No sanction is necessary under s. 195 (*1*) (*b*) of the Criminal Procedure Code to prosecute an informant under s. 211 of the Penal Code when a false charge has been made by him only to the police. *Karim Bakhsh* v. *King-Emperor, 2 Cr. L. J. 66, Bhimaraja Venkateswarulu* v. *Moova Bapulu, 13 Cr. L. J. 480, Emperor* v. *Sheikh Ahmad, 13 Cr. L. J. 578*, followed. But sanction is requisite under the section when he has subsequently preferred a complaint to the magistrate praying for judicial investigation. *Queen-Empress* v. *Sham Lall, I. L. R. 14 Calc. 707, Jogendra Nath Mookerjee* v. *Emperor, I. L. R. 33 Calc. 1, Queen-Empress* v. *Sheikh Beari, I. L. R. 10 Mad. 232*, followed. When a person who has laid an information before the police, reported to be false, has not subsequently applied to the Magistrate for an investigation or has not impugned the correctness of the police report and prayed for a trial, he has not made a "complaint" within the meaning of s. 4 (*h*) of the Code. An order for prosecution cannot be made under s. 476 of the Criminal Procedure Code when the alleged offence under s. 211 of the Penal Code has not been committed in Court, but in relation to a police investigation only. *Dharmadas Kawar* v. *King-Emperor, 7 C. L. J. 373, Jadunandan Singh* v. *King-Emperor, 10 C. L. J. 564*, followed. The procedure of calling on the informant who is reported by the police to have made a false charge before them, to prove his case and the examination of witnesses is not contemplated by the Code, and the proceeding is not a judicial one within s. 476 of the Code. *Mouli Durzi* v. *Naurangi Lall, 4 C. W. N. 351*, followed. TAYEBULLA *v.* EMPEROR (1916) . . . . **I. L. R. 43 Calc. 1152**

SANCTION FOR PROSECUTION—*concld.*

3. ——————— *Sanction to prosecute for preferring a false charge—Refusal to revoke by superior Court—Application to High Court to set aside refusal, under Criminal Procedure Code (Act V of 1898), s. 195 (6), maintainability of—Judges of High Court equally divided in opinion—Senior Judge's opinion to prevail under cl. 36, Letters Patent—Criminal Procedure Code (Act V of 1898), ss. 429 and 439, inapplicability of, to such application—Application to a superior Court under Criminal Procedure Code (Act V of 1898), s. 195, to set aside a sanction given by an inferior Court not an appeal within the Indian Limitation Act (IX of 1908), Art. 154. Held*, by the Full Bench: (i) An order refusing to revoke a sanction granted by a lower Court is one granting sanction, from which an appeal lies to a superior Court under s. 195, cl. (*6*), Criminal Procedure Code. *Muthusami Mudali* v. *Veeni Chetti, I. L. R. 30 Mad. 382*, followed; (ii) When Judges composing a bench of the High Court are equally divided on opinion on hearing an application under section 195, cl. (*6*) of the Criminal Procedure Code against an order of the lower Court in a sanction matter, the procedure to be followed is that laid down in cl. 36 of the Letters Patent and not the one in s. 429 or 439 of the Criminal Procedure Code; accordingly the opinion of the senior Judge prevails. *Per Curiam*:—The power conferred upon the High Court by s. 195 (*6*), Criminal Procedure Code, is not a part of the appellate and revisional jurisdiction of the High Court conferred by Chapters 31 and 32 of the Criminal Procedure Code, but it is a special power conferred by s. 195 (*6*) of the Code. *Held*, by the Division Bench (SUNDARA AYYAR and SPENCER, *JJ.*), that an application to a superior Court under s. 195, cl. (*b*), Criminal Procedure Code, to revoke a sanction granted by an inferior Court is not an appeal within the meaning of Art. 154 of the Limitation Act and hence is not governed by the rule of 60 days allowed by that Art. for criminal appeals. *Per* SPENCER, *J.*, in the Division Bench—But delay in applying may be a ground for refusing to grant sanction. BAPU *v.* BAPU (1912) . . . . **I. L. R. 39 Mad. 750**

SAPINDAS.

See HINDU LAW—STRIDHAN. **I. L. R. 43 Calc. 944**

——————— consent of remoter—

See HINDU LAW—ADOPTION. **I. L. R. 39 Mad. 77**

SARANJAM.

——————— *Succession to Saranjam—Title by inheritance—Saranjam, rr. 2 and 5 under Act XI of 1852—Suit by previous holder of*

SARANJAM—*concld.*

Saranjam—Subsequent holder filing a suit for the same relief—Res judicata—Civil Procedure Code (Act V of 1908), s. 11—Adverse possession against the previous holder—Rights of successive holder barred by limitation—Establishment of right to levy assessment—Indian Limitation Act (IX of 1908), Sch. I, Art. 130. The plaintiff was a Saranjamdar of an ancestral and hereditary Saranjam village where the lands in suit were situate. The lands were in defendant's possession on tenure in consideration of rendering certain Shetsanadi services. The defendants having no longer rendered any service, the plaintiff prayed for possession of the lands or in the alternative for a declaration establishing his right to levy assessment. The defendants contended that the suit was barred by limitation and also by *res judicata* in consequence of a previous decision in a suit (No. 458 of 1888) between the plaintiff's brother and the predecessors-in-title of the defendants for substantially the same reliefs as claimed by the plaintiff. *Held*, that the previous decision operated as *res judicata* as against the present plaintiff because he was claiming under the previous holder and was litigating under the same title as the previous holder in 1888. *Held*, further, that, since the decision in suit of 1888, the defendants and their predecessors-in-title had been holding adversely without payment of assessment and therefore the claim for assessment was barred by limitation inasmuch as neither a special mode of devolution nor an incapacity of alienation would prevent limitation operating against an estate. *Radhabai and Ramchandra Konher* v. *Anantrav Bhagvant Deshpande, I. L. R. 9 Bom. 198*, followed. *Per* HEATON, *J.*: The words "between parties under whom they or any of them claim litigating under the same title" in s. 11 of the Civil Procedure Code, 1908, are intended to cover, and do cover, a case where the later litigant occupies by succession the same position as the former litigant. The words of the section are not intended to make any distinction between different forms of succession. MADHAVRAO HARIHARRAO *v.* ANUSUYABAI (1916) . . **I. L. R. 40 Bom. 606**

SATISFACTION.

——— **of the decree—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 2.
I. L. R. 40 Bom. 333

SCOPE OF AGENCY.

See PRINCIPAL AND AGENT.
I. L. R. 43 Calc. 511

SEA CUSTOMS ACT (VIII OF 1878).

See CONTRACT ACT (IX OF 1872), S. 56.
I. L. R. 40 Bom. 301

SEARCH.

——— **of house—**

See CRIMINAL PROCEDURE CODE, S. 165.
I. L. R. 38 All. 14

SECOND APPEAL.

See REMAND. . **I. L. R. 43 Calc. 104**

1. ——— *Order of Settlement Officer settling rent, whether open to second appeal—Bengal Tenancy Act (VIII of 1885), ss. 105A (4), 106, 109A—Excess area. Per* Curiam: When in a proceeding under s. 105 of the Bengal Tenancy Act the Settlement Officer is asked to increase the rent under sub-s. (*4*) in accordance with the rules laid down in s. 52, and the claim is refused on appeal to the Special Judge, on the ground that the land of the tenant is not proved to be in excess of the area for which rent has been previously paid, a second appeal is not barred by s. 109A of that Act. *Rameswar Singh* v. *Bhooneswar Jha, 4 C. L. J. 138, and Grant* v. *Ram Rekha Bhagat, 14 C. L. J. 110*, considered. *Per* MOOKERJEE, *J.* If in any proceeding under s. 105 questions under s. 105A have been investigated and determined, the order of the Settlement Officer, though in form an order which settles a fair and equitable rent, does in substance embody a decision of questions within the scope of s. 105A, and consequently of s. 106. Such a decision is not one merely settling a rent within the meaning of s. 109A and is consequently liable to be challenged by way of second appeal to the High Court. JNANADA SUNDARI CHOWDHURANI *v.* AMUDI SARKAR (1916) . . **I. L. R. 43 Calc. 603**

2. ——— *Finding of fact—Benami transaction—Suit by husband on mortgage in name of wife—Wife impleaded as defendant—Presumption. Held*, (i) that the question whether a person who sues on a mortgage, not being the mortgagee named in the document, is or is not the true owner of the mortgage is not a question of fact; and (ii) that where a person so suing impleaded the nominal mortgagee (who was his wife) as a defendant and no objection was taken by her, there was a reasonable inference that the plaintiff's statement that he was true owner of the mortgage sued on was as between himself and his wife, correct. DUJAI *v* SHIAM LAL (1915).
I. L. R. 38 All. 122

SECOND PROBATE.

——— **duty on—**

See PROBATE . **I. L. R. 43 Calc. 625**

SECONDARY EVIDENCE.

See EVIDENCE. **I. L. R. 38 All. 494**

SECRETARY OF STATE FOR INDIA.

See COSTS . **I. L. R. 40 Bom. 588**

——— **non-liability of, for acts done in exercise of Sovereign powers—**

See TORT. . **I. L. R. 39 Mad. 351**

——— **suit by—**

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. III OF 1901), S. 42.
I. L. R. 40 Bom. 166

See PENALTY . **I. L. R. 43 Calc. 230**

SECRETARY OF STATE FOR INDIA—*concld.*

——————— *Secretary of State in Council, suit against, in respect of illegal order of District Magistrate under Assam Labour and Emigration Act (VI of 1901), s. 91, and also for alleged defamation in a Government Order—Damage, remoteness of—Liability of defendant under the Government of India Act (I of 1858)—No liability on the ground that the order was made in the course of employment, and that the acts were done by Government servants in the exercise of statutory powers—Alleged ratification by the Local Government—Government Order—Absolute privilege—Absence of malice.* Suit by the plaintiff, who represented the Assam Labour Supply Association in Ganjām and other districts, against the Secretary of State for India in Council for damages in respect of two orders of the District Magistrate of Ganjām suspending and dismissing one *T. S.*, the Local Agent of the Association in Ganjām, and closing his depôt to recruiting under the Assam Labour and Emigration Act (VI of 1901), whereby the plaintiff was prevented from earning from the members of the association his commission of seven rupees for each labourer sent to Assam; and for an alleged libel on the plaintiff in an order passed by the Governor-in-Council on appeals by the plaintiff and others against the aforesaid orders, in which it was stated that the plaintiff's own conduct was not altogether above suspicion. *Held*, by the Court on appeal (affirming the judgment of WALLIS, *J.*, on the Original Side) that (i) as the action of the Collector and District Magistrate who was found to have acted without any malice was not directed against the plaintiff, but only against others and as the injury to the plaintiff, if any, was not the direct consequence of the Collector's act but was only very remotely connected with it, the plaintiff had no cause of action; and (ii) the Governor-in-Council was not liable for the publication of the defamation and the same was done on a privileged occasion, *i.e.*, in the course of its official duties. *Held*, further, by SADASIVA AYYAR, *J.*—(*a*) Even the Collector and District Magistrate was not personally liable as he only did his duty imposed on him by the statute [*viz.*, s. 22, Cl. (*3*) of Assam Labour and Emigration Act (VI of 1901)]; and (*b*) as in doing so he was not the agent of the Government and as the act was not done on Government's behalf, the Government could not ratify the same, nor can Government be liable even if it had ratified the same. *Held*, further, by BAKEWELL, *J.*, that so far as the plaintiff was concerned, as he was neither an employer nor his agent, he was, according to the Act, carrying on an illegal business and his suit was liable to be dismissed also on this ground. ROSS *v.* THE SECRETARY OF STATE FOR INDIA (1915) . . . **I. L. R. 39 Mad. 781**

SECURITIES.

See PRESIDENCY BANKS ACT (XI OF 1876), SS. 36, 37.
I. L. R. 39 Mad. 101

SECURITIES—*concld.*

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXVII R. 5.
I. L. R. 39 Mad. 903

——————— **demand of, by Magistrate—**

See PRESS ACT (I OF 1910), SS. 3 (*1*), 4 (*1*), 17, 19, 20 AND 22.
I. L. R. 39 Mad. 1085

——————— **forfeiture of—**

See PRESS ACT (I OF 1910), SS. 3 (*1*), 4 (*1*), 17, 19, 20 AND 22.
I. L. R. 39 Mad. 1085

——————— **mode of enforcement of—**

See CIVIL PROCEDURE CODE (1908), S. 145, O. XXXIV, R. 14.
I. L. R. 38 All. 327

——————— **scope of—**

See MORTGAGE. **I. L. R. 43 Calc. 895**

SECURITY FOR COSTS.

See INSOLVENCY. **I. L. R. 43 Calc. 243**

SECURITY FOR GOOD BEHAVIOUR.

See CRIMINAL PROCEDURE CODE S. 110.
I. L. R. 38 All. 393

1. ——————— *Dissemination of matter likely to promote enmity or hatred between classes—Necessity of intention—Criminal Procedure Code (Act V of 1898), s. 108 (b).—Penal Code (Act XLV of 1860), s. 153 A.* To justify an order under s. 108 (*b*) of the Criminal Procedure Code, it is sufficient that the words used are likely to promote feelings of enmity or hatred between different classes, and it is not necessary to establish an intention to promote such feelings as it would be on a trial for the offence under s. 153A of the Penal Code. *Dhammaloka* v. *Emperor*, *12 Cr. L. J. 248*, dissented from. *Joy Chander Sarkar* v. *Emperor*, *I. L. R. 38 Calc. 214*, *Jasawant Rai* v. *Ahthavale*, *5 Cr. L. J. 439*; *10 Punj. Rec. 23*, referred to. SITAL PRASAD *v.* EMPEROR (1915). **I. L. R. 43 Calc. 591**

2. ——————— *Person within the local limits of the Magistrate's jurisdiction—Residence—Commission of acts complained of within such local limits—Jurisdiction of Magistrate—Criminal Procedure Code (Act V of 1898) s. 110.* S. 110 of the Criminal Procedure Code does not require residence within the local limits of the jurisdiction of the Magistrate who institutes proceedings thereunder. Where the habits of the persons called upon to furnish security for good behaviour were practised, and their evil reputation acquired, within the local limits of the jurisdiction of the Presidency Magistrate of the Northern Division of the town of Calcutta, though they might be occasionally residing elsewhere:—*Held*, that the Magistrate was competent to take proceedings against such parties under s. 110 of the Code. *Ketaboi* v. *Queen-Empress*, *I. L. R. 27 Calc. 993*, distinguished. EMPEROR *v.* DURGA HALWAI (1915) . . **I. L. R. 43 Calc. 153.**

SECURITY FOR GOOD BEHAVIOUR—*concld.*

3. ———— *Previous convictions, proof of—Central Bureau register of thumb impressions, evidentiary value of—Extract from jail register without proof of identity—Locus pœnitentiæ—Criminal Procedure Code (Act V of 1898), s. 110.* Whenever proof of previous convictions is required, whether under s. 75 of the Penal Code or Chapter VIII of the Criminal Procedure Code, such previous convictions must be proved strictly and in accordance with law, and unless so proved no Court can take them into consideration. A register produced from the Central Bureau purporting to contain the thumb impression of the accused that his descriptive roll with a list of his previous convictions, when there was no evidence how it came to be made and lodged in the Central Bureau nor from what particulars the previous convictions were recorded and certified, was held insufficient proof of such convictions. An extract from the jail register showing previous convictions of a certain person with *aliases* and certified copies of previous convictions of the same in the absence of evidence of identity with the present accused, *held* insufficient to prove previous convictions of the latter. A person who has served the period of his imprisonment should be given a chance of reformation and should not be proceeded with under s. 110 of the Criminal Procedure Code soon after his emergence from jail. *Junab Ali* v. *Emperor, I. L. R. 31 Calc. 783,* referred to. Although general statement of witnesses, *e.g.*, that the accused are all pick-pockets and that every one is afraid of them, may not be wholly inadmissible in evidence, no Court should act on a body of such evidence without testing the statements of the witnesses and obtaining from them some particulars of the facts in which their general statements are made. The case of each accused should be differentiated in the evidence and the order of the Court. EMPEROR *v.* SHEIKH ABDUL (1916).

I. L. R. 43 Calc. 1128

SECURITY TO KEEP THE PEACE

See LETTERS PATENT (24 & 25 VICT., C. 104), CL. 15.

I. L. R. 39 Mad. 539

1. ———— *Conviction under s. 143 of the Penal Code—Absence of finding of acts involving breach of the peace or evident intention of committing the same—Legality of order for security—Criminal Procedure Code (Act V of 1898), s. 106.* To bring a case within the terms of s. 106 of the Criminal Procedure Code, the Magistrate should expressly find that the acts of the accused involved a breach of the peace or were done with the evident intention of committing the same, or at all events the evidence must be so clear that, without an express finding, a superior Court is satisfied that such was the case. *Jib Lal Gir* v. *Jogmohan Gir, I. L. R. 26 Calc. 576,* followed. A finding that the common object of the unlawful assembly was by means of criminal force or show thereof to take possession of land cultivated by

SECURITY TO KEEP THE PEACE—*concld.*

tenant of the rival landlord, and that, but for the direction of the latter to the tenants to retire, which was carried out, there might have been a serious riot, *held* insufficient to bring the case within the purview of s. 106 of the Code. ABDUL ALI CHOWDHURY *v.* EMPEROR (1915).

I. L. R. 43 Calc. 671

2. ———— *Criminal Procedure Code, s. 107—Nature and quantum of evidence necessary before passing order for security.* There must be definite evidence in the case of any and every person charged under s. 107 of the Code of Criminal Procedure, that there is danger of a breach of the peace by him. It is clearly in sufficient against a collective body of persons to suggest that there are indulging in feelings of hostility towards another body of persons. *Queen-Empress* v. *Abdul Kader, I. L. R. 9 All. 452,* referred to. EMPEROR *v.* SHAMBHU NATH (1916).

I. L. R. 38 All. 468

SELF-ACQUISITION.

See ALIYASANTANA LAW.

I. L. R. 39 Mad. 12

SEPARATION.

———— **allegation of—**

See HINDU LAW—JOINT FAMILY.

I. L. R. 43 Calc. 1031

SERVANTS QUARTERS.

———— **acquisition of—**

See LAND ACQUISITION.

I. L. R. 43 Calc. 665

SERVICE INAM.

See MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT (II OF 1894), SS. 5, 10, CL. (2) . **I. L. R. 39 Mad. 930**

SERVICE OF NOTICE.

———— **effect of omission of—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 439, 422, 423.

I. L. R. 39 Mad. 505

SET-OFF.

See ATTORNEY'S LIEN FOR COSTS.

I. L. R. 43 Calc. 932

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 18 . **I. L. R. 38 All. 669**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 19.

I. L. R. 40 Bom. 60

SETTLEMENT BY A HINDU WOMAN ON TRUSTS.

———— *The Indian Trusts Act (II of 1882), s. 83—Trusts failing after settlor's death—Resulting trust in favour of settlor's heirs at the time of her death—The Indian Succession Act (X of 1865), s. 191, effect of—The Probate and Administration Act (V of 1881), s. 4, effect of—* Where by a deed of settlement a Hindu woman

SETTLEMENT BY A HINDU WOMAN ON TRUSTS—*concld.*

conveyed an immoveable property to trustees on certain trusts, some of which failed after her death (as being in favour of persons unborn at the date of the settlement): *Held,* (i) that there was a resulting trust in favour of the settlor, (ii) that the persons entitled to the property on the failure of the trusts were the heirs of the settlor to be determined at the time of her death. Where a person dies intestate and no administration is granted to his estate, the term 'legal representative' in s. 83 of the Trusts Act must include the person or persons beneficially entitled who represent the interests of the deceased by virtue of inheritance. The representative by inheritance is to be found according to law at the moment of the death of the deceased, the maxim being "*Solus deus hæredem facere potest, non homo.*" DWARKADAS DAMODAR *v.* DWARKADAS SHAMJI (1915).

I. L. R. 40 Bom. 341

SETTLEMENT OFFICER.

——— **order of—**

See SECOND APPEAL.

I. L. R. 43 Calc. 603

——— **power of—**

See BENGAL TENANCY ACT (VIII OF 1885), S. 102 . **I. L. R. 43 Calc. 547**

SHARES.

——— **sale of—**

See DAMAGES . **I. L. R. 43 Calc. 493**

SHIPPING ORDERS.

See CONTRACT ACT (IX OF 1872), SS. 56, 65 . . **I. L. R. 40 Bom. 529**

SIMANADARS.

——— *Chaukidari Chakaran Land Act (Beng. VI of 1870) s. 1, whether applicable—Bengal District Gazetteer, reference to by High Court.* The High Court is entitled to use the Bengal District Gazetter as a book of reference. The Chaukidari Chakaran Land Act applies to *simanadars* as the Gazetteer for Bankura shows that in thana Indas (where the lands in suit are situate) the *simanadars* perform those duties which are described in s. 1 of the Act. LALU DOME *v.* BEJOY CHAND MAHATAP (1915).

I. L. R. 43 Calc. 227

SIMPLE MORTGAGE.

See ADVERSE POSSESSION.

I. L. R. 39 Mad. 811

SINGLE JUDGE.

——— **judgment of—**

See LETTERS PATENT APPEAL.

I. L. R. 43 Calc. 90

SIR LANDS.

See AGRA TENANCY ACT (II OF 1901), S. 164 . . **I. L. R. 38 All. 223**

SOLICITOR'S LIEN FOR COSTS.

See COSTS . **I. L. R. 43 Calc. 676**

SOVEREIGN RIGHT.

See ASSESSMENT. **I. L. R. 43 Calc. 973**

SPECIAL CONSTABLES.

——— *Dispute regarding ferry—Proceeding for security to keep the peace drawn up against one party—Appointment of members thereof as special constables—Refusal to act as such—Legality of appointment and of prosecution for such refusal—Police Act (V of 1861) ss. 17, 19.* The only legitimate object of appointing special constables, under s. 17 of the Police Act (V of 1861), is to strengthen the ordinary police force by the addition of suitable persons. When the appointments are not made with such an object, a prosecution under s. 19 of the Act for refusal to act as such will not be permitted. When the members of one party to a ferry dispute were appointed as special constables, and the circumstances showed that it was never really intended to utilize them as police officers, the High Court quashed the order of the District Magistrate directing their prosecution under s. 19 of the Act and the issue of warrants against them. PARDIP SINGH *v.* EMPEROR (1915)

I. L. R. 43 Calc. 277

SPECIAL TRIBUNAL.

See RECORDS, POWER TO CALL FOR.

I. L. R. 43 Calc. 239

SPECIFIC MOVEABLE PROPERTY.

——— *Specific Relief Act (I of 1877), s. 11—Civil Procedure Code (Act V of 1908), O. XXI, r. 31—Pleadings—Suit against a carrier—Non-delivery of goods—Compensation—Limitation Act (IX of 1908), Arts. 31, 49 and 115—Maxim, generalia specialibus non-derogant, applications of.* In order to entitle a plaintiff to obtain delivery of specific moveable property by suit and to enforce the decree so obtained by the stringent methods provided in O. XXI, r. 31 of the Code of Civil Procedure, it is necessary that he should allege and prove facts which entitle him to compel the delivery of specific moveable under the provisions of s. 11 of the Specific Relief Act. Where in a suit against a carrier, the plaint asked for the recovery of one plank of wood that was not delivered to the consignee and also for Rs. 21-12-0 being the loss of interest but contained no allegation that the defendant was in possession of the plank in question and it was obvious from the correspondence that he was not in possession of the same: *Held,* that, in so far as the suit could be regarded as a suit for the return of the specific plank, the case did not come within s. 11 of the Specific Relief Act and the suit must be dismissed; that if the suit was regarded as one for compensation for failure to deliver the plank in breach of the contract under the bill of lading, it was governed by Art. 31 and not by Art. 49 or 115 of the Limitation Act. By the amendment in 1899 of Art.

SPECIFIC MOVEABLE PROPERTY—*concld.*

31 of the Limitation Act the Legislature clearly indicated its intention that the *Article* should apply to a claim against a carrier for compensation for non-delivery of goods irrespective of the question whether the suit was laid in contract or in tort. Art. 49 is inapplicable to such a case; even if it were applicable, its operation would be excluded by the special Art. 31 as amended on the principle *generalia specialibus non-derogant. The British India Steam Navigation Co.* v. *Hajee Mahomed Esach & Co., I. L. R. 3 Mad. 107, Danmull* v. *British India Steam Navigation Co., I. L. R. 12 Calc. 477* and *Great Indian Peninsula Railway Co.* v. *Raisett Chandmull, I. L. R. 19 Bom. 165*, referred to. VENKATASUBBA RAO *v.* THE ASIATIC STEAM NAVIGATION CO., CALCUTTA (1915).

I. L. R. 39 Mad. 1

SPECIFIC PERFORMANCE.

See GUARDIAN AND MINOR.

I. L. R. 38 All. 430

——— **suit for—**

See EXPECTANCIES.

I. L. R. 39 Mad. 554

See SPECIFIC RELIEF ACT (I OF 1877) S. 27 . . **I. L. R. 38 All. 184**

——— **suit for, to sell—**

See COURT FEES ACT (VII OF 1870), S. 7, CLS. (*v*) AND (*x*) . **I. L. R. 38 All. 292**

1. ——— *Agreement to sell decree and rights appertaining thereto and to transfer it to defendant—Vendor and Purchaser—Decree becoming barred by limitation before assignment—Obligation to keep decree on vendor—Civil Procedure Code (Act XIV of 1882), s. 232—Transfer of decree.* The plaintiffs (respondents) brought a suit for specific performance of an agreement made between them and the defendant (appellant) by which the latter contracted to purchase a mortgage decree and all rights appertaining thereto, which decree was to be duly transferred to the defendant, which by reason of s. 232 of the Civil Procedure Code, 1882, could only be done by an assignment in writing. The decree, however, before assignment became barred by limitation, and he refused to take it. *Held* (reversing the decision of the Appellate High Court), that what the plaintiffs had agreed to assign to the defendant was a decree capable of execution; that until assignment there was an obligation on the plaintiffs as vendors to keep the decree alive; and that therefore when the decree became barred by limitation the plaintiffs were asking for specific performance by the defendant of an agreement which they were themselves unable to perform, and no such relief could be granted. *Wolverhampton and Walsall Railway Co.* v. *L. & N.-W. Railway Co., L. R. 16 Eq. 433, per* Lord Selborne, referred to. JATINDRA NATH BASU *v.* PEYER DEYE DEBI (1916) . . . **I. L. R. 43 Calc. 990**

2. ——— *Contract to lend or borrow money—Suit for balance of mortgage money*

SPECIFIC PERFORMANCE—*contd.*

—Damages—Provincial Small Causes Courts Act (IX of 1887), Sch. II, cls. 15, 16—Civil Procedure Code (Act V of 1908), s. 113, O. XLI, r. 1. A suit for specific performance of a contract to lend or borrow money is not maintainable. *Rogers* v *Challis, 27 Beav. 175, Sichel* v. *Mosenthal, 30 Beav. 371, Larios* v. *Gurety, L. R. 5 P. C. 346*, and *The South African Territories* v. *Wallington, [1898] A. C. 309*, followed. Nor would a suit to recover the balance of the mortgage money, or a suit for the rectification of the instrument be cognizable by a Court of Small Causes. (*Vide* cls. 15 and 16 Sch. II, Provincial Small Cause Courts Act, 1887). But a suit for damages for breach of contract is cognisable by a Court of Small Causes, if the amount is within its pecuniary jurisdiction. SHEIKH GALIM *v.* SADARJAN BIBI (1915)

I. L. R. 43 Calc. 59

3. ——— *Specific performance of a contract of sale—S. 27 (6), Specific Relief Act (I of 1877)—Contract varied—Vendors asked to take out letters of administration and leave to sell—Effect of variation—Contingent contract—Order for sale—Title of purchasers under order of Court—Whether such purchasers are affected with notice of previous agreement—Dealings with purdanashin ladies—Independent legal advice—Costs—Discretion of the Appeal Court in modifying order for costs made by the Court of first instance.* Two widows, defendants Nos. 1 and 2 entered into an agreement on the 23rd January 1910 for sale of certain properties for legal necessity with the plaintiffs at Rs. 8,000 for cottah. The agreement contained the following covenant on the part of the vendors—"We shall at our own expenses do everything which your attorney shall consider necessary for rectifying and clearing the title-deeds." The idea of applying for Letters of Administration was not present in the mind of any of the parties at the time of the agreement. Subsequently in order to obviate any objection of the reversioner on the score of legal necessity the plaintiffs asked the widows to apply for Letters of Administration with leave to sell to the plaintiffs. The widows obtained Letters of Administration and one of them actually obtained leave to sell to the plaintiffs. Subsequently the widows applied and obtained leave for sale to the defendants Nos. 3, 4 and 5 (described as the Nandi defendants) who offered a higher price and the property was conveyed to them. The Nandi defendants had notice of the agreement for sale to the plaintiffs at the time when they took the conveyance. In a suit by the plaintiffs for specific performance of the agreement of sale against all the defendants and in the alternative for damages against defendants Nos. 1 and 2 for breach of contract. *Held*, that the contract as varied by mutual consent became a contingent one, and as the contingency had not happened (*i.e.*, leave of the Court had not been obtained in their favour) the plaintiffs were not entitled to claim performance of the contract. *Narain Pattro* v. *Aukhoy Narain Manna, I. L. R. 12 Calc. 152*, and *Sarbesh Chandra* v. *Khettra Pal*,

SPECIFIC PERFORMANCE—*contd.*

14 C. W. N. 451 : s. c. 11 C. L. J. 346, followed. *Held*, also, that the plaintiffs were not entitled to claim damage as their action was based on the original contract and not on the contract as modified and as there was no breach of the modified contract. KALIDASI DASSEE *v.* NOBO KUMARI DASSEE (1916) . . . **20 C. W. N. 929**

4. ——————————— *Contract—Specific performance of contract—Agreement to reduce terms into writing—Contract, if complete before writing—Contract completed subject to insertion of "usual terms and conditions," if specifically enforcible—Vendor, if may waive such terms and enforce others—Earnest-money, payment of, if conclusively of completed contract—Uncertainty—Variance between pleading and proof.* In a suit for specific performance of a contract for sale and purchase of immoveable property where the purchaser agreed to buy the property at a certain price and agreed to certain terms and conditions as he understood them and paid earnest-money and the terms of the contract were sought to be proved partly by evidence in writing and partly by oral evidence and it appeared that the parties contemplated a formal written agreement to be approved and afterwards executed embodying the special terms and conditions already supposed to have been agreeed upon and the "usual terms and conditions" of sale and purchase and it appeared that there were a number of terms and conditions admittedly not agreed to or discussed between the parties which were afterwards embodied in a draft agreement prepared by the vendor's solicitor and submitted for the approval of the purchaser and which draft agreement the purchaser did not approve: *Held*, that there was no completed contract between the parties capable of being specifically enforced. *Per* JENKINS, *C. J.*—It being expressly pleaded in the plaint that it was a matter of actual agreement and not merely the expression of a desire that the terms should be embodied in a written agreement there was, in the absence of such a formal contract in writing, no concluded contract between the parties. That where the terms of a contract are sought to be proved by oral evidence the provision for a prospective written agreement cannot be treated as negligible the more so where the supersession is of an oral by a written agreement and not merely of one writing by another. That even in the case of a supersession of a written document by a more formal writing the circumstance that the parties do intend to make a subsequent agreement has been held to be strong evidence that they did not intend the previous negotiation to amount to an agreement. That even if the main terms be substantially agreed upon and to that extent the purchaser may have considered that there was a contract and have used language appropriate to that position nevertheless where it appears that the prospective written agreement contemplated embodying the term agreed upon or supposed to have been agreed upon together with other terms and conditions described as "usual terms and conditions" the contract cannot be specifically enforced for uncertainty. That the mere payment of earnest-money did not preclude the purchaser from pleading that there was no concluded contract. *Per* WOODROFFE, *J.*—The Court will not enforce specific performance of a contract the terms of which are uncertain. The question whether a contract is uncertain is a question of fact which arises on the documents and oral evidence tendered in support of it. An Appeal Court is not bound to accept the first Court's appreciation of the facts of the case. Both the facts and law are open to the Court of Appeal. But appellant should satisfy the Appeal Court that the judgment appealed against is erroneous. The mere reference to a formal agreement will not prevent a binding bargain. The fact that the parties refer to the preparation of an agreement by which the terms agreed upon are to be put into more formal shape does not prevent the existence of a binding contract. The payment of earnest-money is itself evidence of a concluded contract. *Per* MOOKERJEE, *J.*—It is well settled that the fact that the parties intended to embody the terms of the contract in a formal written agreement is strong evidence that the negotiations prior to the drawing of such writing are merely preliminary and not intended or understood to be binding. If it is definitely expressed and understood that there is to be no contract until the formal writing is executed there is plainly no binding agreement formed until this provision is complied with. It is also true that if all terms of the agreement have not been settled and it is understood that these unsettled terms are to be determined by the formal contract, there is no binding obligation until the writing is executed. But if the oral agreement or written memorandum is complete in itself and embodies all the terms to be inserted in the intended formal writing a binding obligation is fixed on the parties unless it is understood and intended that such contract shall not become operative until reduced to writing. The question is merely one of intention. If the written draft is viewed by the parties merely as a convenient memorial of record of their previous contract, its absence does not affect the binding force of the contract; if, however, it is viewed as the consummation of the negotiations, there is no contract until the written draft is finally signed. To determine which view is entertained in any particular case several circumstances may be helpful, as for example whether the contract is of that class which are usually found to be in writing, whether it is of such a nature as to need a formal writing for its full expression, whether it has few or many details, whether the amount involved is large or small, whether it is a common or usual contract, whether the negotiation itself indicates that a written draft is contemplated as a final conclusion of the negotiation. If a written draft is proposed, suggested or referred to during the negotiations it is some evidence that the parties intended it to be the final closing of the contract. The Court

SPECIFIC PERFORMANCE—*concld.*

should refuse specific performance where there is substantial variance between the pleading and proof. The draft agreement containing terms which were never settled before between the parties, the legitimate inference to be drawn is that the parties intended the written draft to be the consummation of their negotiations which were to be treated as concluded only upon the final execution of the written agreement. Where many terms still remained undetermined it is a sure index that the contract has not yet been concluded. Where there is ambiguity in any of the conditions of sale in restriction of the rights of the purchaser the condition should be construed more strictly against the vendor. HYAM *v.* M. E. GUBBAY (1915) . . . **20 C. W. N. 66**

SPECIFIC RELIEF ACT (I OF 1877).

See NUISANCE . **I. L. R. 40 Bom. 401**

——— **s. 3—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 40 **I. L. R. 40 Bom 498**

——— **s. 11—**

See SPECIFIC MOVEABLE PROPERTY. **I. L. R. 39 Mad. 1**

——— **s. 12—**

——— *Suit for delivery of cattle—Specific performance of the contract or compensation—Alternative reliefs—Non-maintainability of the suit—Art. 15, second schedule, Provincial Small Cause Courts Act (IX of 1887)—Substantial justice—S. 25, Provincial Small Cause Courts Act.* The mortgagors entered into a contract with their mortgagees whereby, in consideration of the latter making an endorsement on the back of the mortgage-bond crediting Rs. 215 to the mortgagor's account, the mortgagor agreed to deliver to the mortgagees certain heads of cattle. The mortgagees performed their part of the contract and then sued the mortgagors in the Small Cause Court for delivery of the cattle promised, and in the alternative for damages. The Court having dismissed the suit as being a suit for specific performance of a contract and thus beyond its competence as a Small Cause Court: *Held*, that under s. 12 of the Specific Relief Act no suit for specific performance would lie as, unless there was something remarkable about the cattle, it was obvious that adequate compensation for the breach of the contract could be given in money. Substantial justice was done by the High Court in the exercise of the powers under s. 25, Provincial Small Cause Courts Act, by directing that the plaint be amended by striking out the clause demanding specific performance and the suit dealt with solely as a suit for damages occasioned by a breach of the contract. BHARAT MAHTO *v.* NISARALI SHEIKH (1916) . **20 C. W. N. 1020**

——— **s. 27**—*Sale—Suit for specific performance of a contract to sell, defendants being vendees under a registered sale-deed—Priority—Registration Act (XVI of 1908), s. 50.* The owners of a village which had already been sold at an auction sale in execution of a decree agreed to sell it to the plaintiff, provided that the auction sale should be set aside. The auction sale was set aside; but subsequently the village was sold by means of a registered sale-deed to a third party. *Held*, on a suit by the plaintiff for specific performance of the contract to sell to him, that the defendants vendees' registered sale-deed did not take priority over the contract in his favour and that it lay on the defendants to rebut the evidence given by the plaintiff to the effect that the defendants at the time of their purchase were aware of the existence of the contract in favour of the plaintiff. NAUBAT RAI *v.* DHAUNKAL SINGH (1916) . . . **I. L. R. 38 All. 184**

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

——— **s. 27**—*concld.*

——— **s. 27 (*b*)—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 54 . **I. L. R. 39 Mad. 462**

——— **s. 39**—*Conveyance executed by accused in consideration of complainant withdrawing prosecution for non-compoundable offence—Suit to set aside such sale-deed, if lies—Parties in pari delicto, if entitled to declaratory relief—Court's discretion under s. 39.* The rule of law in England with regard to illegal contracts is that a Court of Law will not aid persons in enforcing the performance of an illegal contract or assist them to recover back property which they have given away under such an illegal contract when the persons and parties to the contract are themselves *pari delicto* in procuring this illegality. The Courts of equity in England have always refused to afford equitable relief in enforcing a contract void in law or restoring property which is based on an illegal contract where the illegality is apparent on the face of the document itself. The principle on which Courts of law and equity have refused to restore property given away under an illegal agreement, is equally applicable when the relief prayed for is by way of a declaration, after the party seeking such relief has secured to himself the benefit of the agreement. S. 39 of the Specific Relief Act in allowing relief to be granted in a proper and fit case, even when a contract out of which the right springs is void, leaves it entirely in the discretion of the Court to exercise the jurisdiction so conferred upon it. Where *L*, *B's* agent, having purchased property, *B* alleged that it was purchased by *L* as *B's* trustee whilst *L* claimed to have purchased it in his own right, and the dispute culminated in civil actions brought by the parties against each other, and in *B* instituting criminal proceedings against *L* under ss. 408, 477 of the Indian Penal Code, but at the instance of arbitrators appointed by mutual consent, the disputes were settled and *B* withdrew the criminal and other proceedings against *L* and in consideration thereof *L*, *inter alia*, executed a sale-deed of the property purchased by him: *Held*, in a suit by *L* to have the conveyance declared void and the sale set aside and cancelled, that the

SPECIFIC RELIEF ACT (I OF 1877)—*concld.*

——— **s. 39**—*concld.*

whole of the contract was illegal, as it was not possible to sever the legal from the illegal part. That there being no evidence that there was any undue influence, fraud or duress or that the plaintiff took a more innocent part in the illegal compromise than the defendant, the Court would not grant relief under s. 39 of the Specific Relief Act. BINDESHARI PRASAD *v.* LEKHRAJ SAHU (1916) **20 C. W. N. 760**

——— **s. 42**—

See DECLARATORY DECREE, SUIT FOR. **I. L. R. 43 Calc. 694**

See MADRAS VILLAGE COURTS ACT (MAD. I OF 1889), S. 24. **I. L. R. 39 Mad. 802**

See MUNICIPAL LAW. **L. R. 43 I. A. 243**

——— ——— *Declaration, suit for —Legal character or right to property, meaning of—Rights under a contract, declaration as to, if maintainable—S. 42, not exhaustive—Ordinary rule—Exception—Kuri, subscriber to—Assignee from subscriber—Right of, if continue payment—Suit for declaration, by, if maintainable.* S. 42, of the Specific Relief Act does not contemplate a suit for a declaration that a valid personal contract subsists between the plaintiff and the defendant, as it is not a suit for a declaration of title to a legal character or a right to property. S. 42 of the Specific Relief Act is not intended to be exhaustive as regards the circumstances under which declaratory suits can be maintained. *Robert Fischer* v. *The Secretary of State for India, I. L. R. 22 Mad. 270,* referred to. *Kristaya* v. *Kasipati, I. L. R. 9 Mad. 55,* referred to. But a declaratory relief will not be given in respect of rights arising out of a contract which would affect only the pecuniary relationship between the parties to the contract, unless there are exceptional circumstances in a case to take it out of the ordinary rule. Where the plaintiff, who was the purchaser of the rights of the second defendant who was a subscriber to a half-ticket in a kuri started by the first defendant as its proprietor, sued the latter for a declaration that he was not a defaulter and was entitled to continue to pay the subscriptions to the kuri: *Held,* that the suit for declaration was not maintainable. RAMAKRISHNA *v.* NARAYANA (1914) . . . . **I. L. R. 39 Mad. 80**

SPIRITUAL WELFARE.

See HINDU LAW—ALIENATION. **I. L. R. 43 Calc. 574**

STABLES.

See NUISANCE . **I. L. R. 40 Bom. 401**

STAMP.

See BUNDELKHAND ALIENATION OF LAND ACT (II OF 1903), S. 17. **I. L. R. 38 All. 351**

STAMP—*concld.*

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92 . **I. L. R. 40 Bom. 541**

See EVIDENCE . **I. L. R. 38 All. 494**

See STAMP ACT (II OF 1899), SCH. I, ART. 55 . . **I. L. R. 38 All. 56**

STAMP ACT (II OF 1899).

——— **s. 3**—

See BUNDELKHAND ALIENATION OF LAND ACT (II OF 1903), S. 17. **I. L. R. 38 All. 351**

——— **Sch. I, Art. 5** (*c*)—*Agreement to hire with option of purchase, stamp duty on.* An instrument was executed between the Linotype and Machinery, Ltd., and the Windsor Press whereby a machine was hired by the latter for a period on condition that the hirer would pay a fixed amount on execution of the deed and another fixed amount by equal monthly instalment with interest and that on payment of the full sum with interest the machine would become the property of the hirer but that until such payment was made the machinery would continue to be on hire: *Held* (on a reference by the Board of Revenue under s. 57 of the Stamp Act), that the document in question was an agreement within the meaning of Art. 5, cl. (*c*) of Sch. I to the Indian Stamp Act and was therefore liable to a stamp duty of eight annas. *In the matter of* LINOTYPE AND MACHINERY, LTD. (1916) . . . **20 C. W. N. 1252**

——— **Sch. I, Art. 35**—*Amaldustak, whether it requires stamp—Conviction under s. 62 (b), if maintainable—Schedule of Stamp Act if exhaustive.* The schedule attached to the Stamp Act must be treated as exhaustive. An agreement for a lease whereby no rent is reserved and no premium paid or money advanced is not included in the schedule and does not require a stamp: *Held,* on a construction of *amaldustak* which was for a term of seven years but wherein no rent was fixed, that the document did not require stamp and so the conviction of executant of the document under s. 62 (*b*) of the Stamp Act was set aside. SUNDER KUER *v.* KING-EMPEROR (1916) **20 C. W. N. 923**

——— **Sch. I, Art. 55**—*Stamp—Release Partition deed.* Two persons, each of whom claimed the sole right to the property of a deceased relation, arrived at a compromise of their respective claims and gave effect thereto by means of two deeds of even date, by which deeds each relinquished in favour of the other his (or her) claim to a portion of the estate of the deceased. *Held,* that these deeds were releases, assessable to stamp duty under Art. 55 of the first schedule to the Indian Stamp Act, 1899. *Eknath S. Gownde* v. *Jagannath S. Gownde, I. L. R. 9 Bom. 417,* and *Reference under Stamp Act, s. 46, I. L. R. 18 Mad. 233,* referred to. *Reference under Stamp Act, s. 46, I. L. R. 12 Mad. 198,* distinguished. JIBAN KUNWAR *v.* GOBIND DAS (1915) **I. L. R. 38 All. 56**

STAMP DUTY.

———— on a pauper plaint—

See CIVIL PROCEDURE CODE (1908), O. XXXIII, RR. 10, 11.
I. L. R. 38 All. 469

STANI, KARNAVAN.

See MALABAR TARWAD.
I. L. R. 39 Mad. 918

STATEMENT.

———— from a complainant, not a confession—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 164.
I. L. R. 39 Mad. 977

STATUTE.

———— *Not declaratory but amending—No retrospective operation.* Statutes which are properly of a declaratory character have a retrospective effect. But the nature of the statute must be determined from its provisions, and the mere fact that the expression "it is declared" has been used, is by no means conclusive as to the true character of the legislation. JOTIRAM KHAN *v.* JONAKI NATH GHOSE (1914)
20 C. W. N. 258

STAY OF CRIMINAL PROCEEDINGS.

———— *Stay of criminal proceedings pending appeal in matter out of which they arise—Application for succession certificate—Allegations false—Enquiry under s. 476, Criminal Procedure Code (Act V of 1898)—Order for prosecution under ss. 193 and 209, Indian Penal Code (Act XLV of 1860)—Appeal pending in High Court—Stay of criminal proceedings.* In the course of a proceeding upon an application for revocation of the grant of a succession certificate, the District Judge found that *D*, the applicant for the certificate, was not, as he alleged, related to the deceased in any way and ordered his prosecution under ss. 193 and 209, Indian Penal Code. *D* then filed an appeal to the High Court and asked for stay of criminal proceedings pending the hearing of the appeal: *Held*, that to make a declaration in the rule for stay of proceedings as to the correctness or otherwise of the order of the District Judge would be to prejudge an issue which is likely to come before the Bench who will hear the appeal. The proceedings against the appellant under ss. 193 and 209, Indian Penal Code, were stayed pending the hearing of the appeal. DEBI MAHTO *v.* KING-EMPEROR (1916) . . 20 C. W. N. 1116

STAY OF EXECUTION.

See COMPANIES ACT (VII OF 1913), S. 207.
I. L. R. 38 All. 407

STAY OF PROCEEDING.

See STAY OF SUIT.
I. L. R. 43 Calc. 144

STAY OF SUIT.

———— *Jurisdiction—Civil Procedure Code (Act V of 1908), s. 10—Stay of proceedings in one of two suits in respect of same subject-matter in different Courts.* *A*, who carried on business at Karachi and employed *B*, as his commission agent at Calcutta, instituted on 16th February 1915, in the Court of the Judicial Commissioner of Sind at Karachi, a suit against *B*, for an account and the recovery of whatever sum should be found due on the taking of such account. On 10th March 1915, *B* instituted in the High Court at Calcutta the present suit against *A* for the recovery of Rs. 26,665 or in the alternative an account. Thereupon, *A* applied to have the present suit stayed pending the determination of his suit in the Karachi Court:—*Held*, that the only question that required consideration was whether the Karachi Court has jurisdiction to grant the reliefs claimed. The plaint in the Karachi suit sets out allegations that clearly give jurisdiction to that Court to try the case. The present suit must, therefore, be stayed till the determination of the suit at Karachi. PADAMSEE NARAINJEE *v.* LAKHAMSEE RAISEE (1915)
I. L. R. 43 Calc. 144

STOPPAGE IN TRANSIT.

See CONTRACT ACT (IX OF 1872), S. 103.
I. L. R. 40 Bom. 630

See SALE OF GOODS.
L. R. 43 I. A. 164

STRAITS SETTLEMENTS ORDINANCE (III OF 1893).

See EVIDENCE . L. R. 43 I. A. 256

STRAITS SETTLEMENTS ORDINANCE (VI OF 1896).

———— ss. 17, 22—

See LIMITATION . L. R. 43 I. A. 113

STRAITS SETTLEMENTS ORDINANCE (XXXI OF 1907).

———— ss. 133, 196—

See LIMITATION L. R. 43 I. A. 113

STRIDHAN.

See HINDU LAW—STRIDHAN.

SUBORDINATE COURT.

See LEGAL PRACTITIONERS ACT (XVIII OF 1879), S. 14.
I. L. R. 39 Mad. 1045

———— jurisdiction of —

See CONTRACT ACT (IX OF 1872), SS. 69 AND 70 . I. L. R. 39 Mad. 795

SUBORDINATE JUDGE.

———— jurisdiction of—

See WAKF . I. L. R. 43 Calc. 467

SUBROGATION.

See CONTRACT ACT (IX OF 1872), S. 70.
I. L. R. 40 Bom. 646

SUBROGATION—*concld.*

See MORTGAGE—SUBROGATION.
I. L. R. 38 All. 502

——— *Prior mortgage—Fraudulent suppression of, by vendor.* If *A* purchases a property subject to three successive charges *X*, *Y* and *Z* with full knowledge of their existence, and retains a portion of the purchase-money in his hands with a view to satisfy the mortgages *Y* and *Z*, but subsequently discharges the security *Z*, he cannot on satisfaction of the mortgage *X* use it as a shield against the mortgage *Y*. *Biseswar Prasad* v. *Lala Sarnam Singh*, *6 C. L. J. 134*, and *Hiam* v. *Vogel*, *69 Missouri 529*, followed. But where the purchaser found on enquiry that there were only two subsisting charges *Y* and *Z* to be satisfied, but discovered after his purchase that there was a prior charge *X* which was falsely described as satisfied in the mortgage instrument of *Y* (in a suit upon bond *X*): *Held*, that from whatever point of view the case may be considered, the purchaser was entitled to priority in respect of the payment made by him to satisfy the first mortgage *X*. *Mohesh Lal* v. *Mohant Bawan Das*, *I. L. R. 9 Calc. 961*; *L. R. 10 I. A. 62*, followed. *Held*, also, that the purchaser was not entitled to priority on the basis of the payment made by him to satisfy the second mortgage *Y*. HAR SHYAM CHOWDHURI *v.* SHYAM LAL SAHU (1915) . **I. L. R. 43 Calc. 69**

SUBSTITUTED SERVICE.

See SUMMONS, SERVICE OF.
I. L. R. 43 Calc. 447

SUBSTITUTION OF PROPERTY AND SECURITY.

——— *Right of purchaser in court-auction to substituted properties—Transfer of Property Act (IV of 1882), ss. 2 (d), 8, 36, 44 and 52—'Contract to the contrary' in s. 36 of the Transfer of Property Act.* After a decree for sale on a mortgage, the mortgagor who was in possession gave a lease of his properties to the first defendant for one year from July 1907 till July 1908 with a covenant for payment of the rent on 10th January 1908. In ignorance of this lease and the reservation of a rent the mortgage properties and the crops were brought to sale in November 1907 and plaintiff purchased the lands together with the crops thereon and the sale was confirmed in December 1907. The crops were harvested in January 1908 by the lessee. In a suit by the purchaser for the rent of the whole year from the mortgagor and his lessee: *Held*, (*a*) that the purchase of the right, title and interest of the mortgagor to the lands and of the standing crops thereon entitled the purchaser to receive the whole rent reserved which was the thing substituted by the mortgagor for the crops, (*b*) that ss. 8 and 36 of the Transfer of Property Act (IV of 1882) were inapplicable as the purchase was in Court-auction, (*c*) that a stipulation to pay rent of a year's lease at particular date is a contract to the contrary within the meaning of s. 36 of the Transfer of Property Act (IV of 1882), which enacts that the right to rent as between the transferor and the transferee ordinarily accrues from day to day, and (*d*) that the creation of a lease for one year after a suit and decree on mortgage is not affected by the doctrine of *lis pendens* enunciated in s. 52 of the Transfer of Property Act (IV of 1882) as such a lease is an ordinary incident of the beneficial enjoyment of a mortgagor allowed to remain in possession. SUBBARAJU *v.* SEETHARAMARAJU (1914) . . . . **I. L. R. 39 Mad. 283**

SUBSTITUTION OF PROPERTY AND SECURITY—*concld.*

SUCCESSION.

See AGRA TENANCY ACT (II OF 1901), S. 22 . **I. L. R. 38 All. 197, 325**

See HINDU LAW—IMPARTIBLE ESTATE.
I. L. R. 38 All. 590

See HINDU LAW—STRIDHAN.
I. L. R. 43 Calc. 944

See HINDU LAW—SUCCESSION.
I. L. R. 43 Calc. 1
I. L. R. 38 All. 117, 417

See MAHANT . **I. L. R. 43 Calc. 706**

See OUDH ESTATES ACT (I OF 1869), SS 8, 10 . **I. L. R. 38 All. 552**

See SARANJAM . **I. L. R. 40 Bom. 606**

——— *Memons—Hindus converted to Mahomedanism—Hindu Law of Succession retained—Migration to Mombasa—Change of custom—Onus of proof—Evidence.* Memons are a sect of Mahomedans who were converted from Hinduism some four centuries ago but retained their Hindu Law of Succession, and are throughout India governed by that law, save where a local custom to the contrary is proved. Where, however, Memons migrate from India and settle among Mahomedans the presumption that they have adopted the Mahomedan custom of succession should be much more readily made. The analogy in the latter case is rather to proof of a change of domicile than a change of custom. A Memon, whose father some fifty years before the suit had migrated from India and settled with his family among Mahomedans at Mombasa, lived at that place and died there intestate: *Held*, upon evidence as to the practice among Memons at Mombasa and applying the above principle, that the succession to the estate of the deceased Memon was governed by Mahomedan and not by Hindu Law. ABDURAHIM, HAJI ISMAIL MITHU *v.* HALIMABAI . . **L. R. 43 I. A. 35**

SUCCESSION ACT (X OF 1865).

——— s. 57—*Will, revocation of—Tearing.* When a testator sent for his will, wrote the word "cancelled" thereon and signed in and according to his attorney's direction tore it partially: *Held*, that this showed the intention of the testator to revoke the will and the partial tearing constituted a sufficient revocation of the

SUCCESSION ACT (X OF 1865)—*concld.*

——— s. 57—*concld.*

will within the meaning of s. 57 of the Indian Succession Act. *Elms* v. *Elms*, *1 Sw. & Tr. 155*, distinguished. *Bibb* v. *Thomas*, *2 W. Bl. 1043*, referred to. JOHUR LAL DEY *v.* DHIRENDRA NATH DEY (1915) . . **20 C. W. N. 304**

——— ss. 62, 67, 68, 69—

See WILL . **I. L. R. 40 Bom. 1**

——— ss. 107, 111—

See HINDU LAW—WILL.
I. L. R. 43 Calc. 432

——— s. 191—

See SETTLEMENT BY A HINDU WOMAN BY TRUSTS. . **I. L. R. 40 Bom. 341**

——— ss. 311, 312—

See WILL . **I. L. R. 43 Calc. 201**

——— s. 332—*Aboriginal tribes in Chota Nagpur—Inheritance—Law applicable—Special notification under s. 332 issued at the appellate stage, whether has retrospective effect.* Notification, dated 2nd May 1913, issued by the Government of India under s. 332 of the Indian Succession Act at the appellate stage of a case did not apply where there had already been a decision of a competent court regarding the rights of parties. In the case of codified law the ordinary practice of the legislature is to make special provision when it thinks fit to do so for the saving of custom, usage and ordinary rights. There is no authority that, after customary law has been stereotyped in the form of a statute which contains no provision saving custom, it is open to a Court to give effect to custom, much less to a custom inconsistent with the statute. As the Indian Succession Act contains no clause saving custom, the Courts are not competent to accept custom as a reason for deviating from the provisions of the Act. TUNI ORAIN *v.* LEDA ORAON (1916) . . . . **20 C. W. N. 1082**

SUCCESSION CERTIFICATE.

——— *Certificate refused—Matters to be proved to entitle applicant to a certificate.* A Government promissory note payab to one Madho Sahai was assigned by a registered deed by the legal representative of Mahdho Sahai to one Radhika Prasad. Upon the assignee applying for a certificate of succession in respect of this note, it was refused on this ground that it was not established that the assignor had himself a good and subsisting title to the note. *Held*, that whether the assignor of the applicant had a valid title or not, or whether the assignment conveyed any title to the applicant, or whether the debt secured by the promissory note was recoverable or not, were not matters which the court had to determine upon an application for a certificate. The only question which the court had to decide was whether the applicant was the representative of the person to whom the debt was alleged to have been due. RADHIKA PRASAD BAPUDI *v.* SECRETARY OF STATE FOR INDIA (1916)
I. L. R. 38 All. 438

SUCCESSION CERTIFICATE—*concld.*

SUCCESSION CERTIFICATE ACT (VII OF 1889).

See SUCCESSION CERTIFICATE.

——— s. 4—*Letters of administration—Assignment of debt by holder of letters of administration of debt covered by certificate—Rights of assignee.* A decree for possession of certain property and for mesne profits was passed in favour of *A* and his wife. The wife died after the date of the decree. *A* obtained letters of administration in respect of the estate of his wife, and then transferred his own rights under the decree, as also those of his wife to *H*. *H* applied for execution of the decree. The judgment-debtors objected, *inter alia*, that the decree could not be executed without letters of administration or a succession certificate being obtained by a transferee. *Held*, that *H* could execute the decree without taking out fresh letters of administration. *Per* WALSH, *J*. A person claiming as assignee of a debt which was due to the estate of a deceased person is not claiming "the effects of the deceased." From the date of assignment, the debt due to the deceased ceases to be part of the deceased's effect. The claim contemplated by sub-s. (*1*) of s. 4 of the Succession Certificate Act is a claim made by a person in the capacity of, and as a personal representative of a deceased person. GOSWAMI SRI RAMAN LALJI *v.* HARI DAS (1916)
I. L. R. 38 All. 474

SUCCESSION DUTY.

See PROBATE . **I. L. R. 43 Calc. 625**

SUDRAS.

——— illegitimate sons of—

See HINDU LAW—INHERITANCE.
I. L. R. 40 Bom. 369

See HINDU LAW—SUCCESSION.
I. L. R. 39 Mad. 136

SUIT.

See SUIT FOR CANCELLATION OF DOCUMENT.

——— by a Hindu widow, competency of transferee to continue—

See (INDIAN) LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 132, 75.
I. L. R. 39 Mad. 981

——— by minor for possession—

See MINOR . **I. L. R. 38 All. 154**

——— dismissal of—

See CIVIL PROCEDURE CODE (1908), O. IX, R. 2 . **I. L. R. 38 All. 357**

See CIVIL PROCEDURE CODE (1908), O. XI, R. 21 . **I. L. R. 38 All. 5**

SUIT—*concld.*

——— **for ejectment**—

See ARGA TENANCY ACT (II OF 1901), SS. 58, 177 (*c*) . **I. L. R. 38 All. 465**

——— **for money had and received**—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 62 . **I. L. R. 38 All. 676**

——— **for redemption of mortgage**—

See MORTGAGE . **I. L. R. 38 All. 148**

——— **to redeem**—

See MORTGAGE . **I. L. R. 38 All. 411**

——— **to set aside decree against minor**—

See MINOR . **I. L. R. 38 All. 452**

——— **transfer of**—

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), S. 17. **I. L. R. 38 All. 425**

——— **valuation of**—

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 63 . **I. L. R. 38 All. 72**

SUIT FOR CANCELLATION OF DOCUMENT.

——— *Sale-deed—Alleged illegality of transaction—Sale by one deed of fixed rate and occupancy holdings.* The plaintiff by one and the same sale-deed purported to transfer (i) a fixed rate holding, and (*ii*) part of an occupancy holding. *Held*, that he was not entitled to a decree setting aside the sale-deed merely because part of the property covered by it was by law not transferable. BAJRANGI LAL *v.* GHURA RAI (1916) **I. L. R. 38 All. 232**

SUIT TO SET ASIDE A DECREE.

——— *Fraud—What constitutes fraud—Transfer of Property Act (IV of 1882), s. 90—Application for a decree under s. 90 without informing Court of previous refusal to grant such a decree.* Certain mortgagees instituted a suit for sale on a mortgage and also asked in their plaint for a personal decree against the mortgagors under s. 90 of the Transfer of Property Act, 1882. The Court in that suit granted the plaintiffs a decree for sale but refused them the decree asked for under s. 90. Some years afterwards the plaintiffs again applied for a decree under s. 90. Notice of this application was duly served upon all the judgment-debtors. They did not appear, and the Court granted a decree, but limited it to the assets of the deceased mortgagor. The judgment-debtors then filed a suit to have this decree set aside on the ground of fraud, the fraud alleged being mainly that the decree-holders had not brought to the notice of the Court the fact that they had once before applied for and been refused a decree under s. 90. *Held*, that the neglect to inform the Court of the fact that there had been a previous attempt at another stage of the litigation to get a personal decree, even assuming that the neglect was wilful, could not amount to fraud which would entitle the plaintiffs to set aside the decree which was obtained by the defendants under s. 90 of the Transfer of Property Act. RAM RATAN LAL *v.* BHURI BEGAM (1915) . **I. L. R. 38 All. 7**

SUIT TO SET ASIDE A DECREE—*concld.*

SUITS VALUATION ACT (VII OF 1887).

See MADRAS CIVIL COURTS ACT (III OF 1873), SS. 12, 13. **I. L. R. 39 Mad. 447**

——— **s. 4**—

See COURT FEES ACT (VII OF 1870), SCH. II, ART. 17 . **I. L. R. 39 Mad. 602**

SUMMARY TRIAL.

——— **outside British India**—

See EUROPEAN BRITISH SUBJECT. **I. L. R. 39 Mad. 942**

SUMMONS CASE.

——— **procedure that of warrant case**—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 256. **I. L. R. 39 Mad. 503**

SUMMONS, SERVICE OF.

——— *Substituted service—"Due and reasonable diligence"—Practice—Appeal from order refusing to set aside ex parte decree—Civil Procedure Code (Act V of 1908), O. V, rr. 12, 17 ; O. IX, r. 13—Costs.* For substituted service of summons to be effective, it is essential that the requirements of the rules of the Code should be strictly observed. Knowledge of the institution of the suit, derived by the defendant *aliunde* is not sufficient in the absence of proper service of the summons. Where the serving officer on three separate occasions went to the place of business of the defendant's firm, under the erroneous belief that it was his ordinary place of residence, and asked for the defendant and, on not finding him, posted a copy of the writ of summons on the outer door of the premises :—*Held*, that this was not sufficient service. Proper enquiries and real and substantial effort should be made to find out when and where the defendant is likely to be found. *Cohen* v. *Nursing Dass Auddy, I. L. R. 19 Calc. 201*, followed. KASSIM EBRAHIM SALEJI *v.* JOHURMULL KHEMKA (1915) **I. L. R. 43 Calc. 447**

SURETY.

——— **rights of, against principal debtor**—

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), SS. 30, 47, 59, 74, 94 . . **I. L. R. 39 Mad. 965**

——— *Duty of Magistrate to enquire into fitness of each surety on evidence taken by him—Delegation of enquiry to the police or others—Rejection of sureties on a police report—Grounds of rejection—Want of control—Criminal Procedure Code (Act V of 1898), s. 122.* Under s. 122 of the Criminal Procedure Code, a Magistrate must

SURETY—*concld.*

personally hold a separate inquiry as to the fitness of each surety and decide the matter on evidence taken for the purpose, and he cannot delegate to a police officer or other person the function entrusted by law to him alone. *Suresh Chandra Basu* v. *Emperor, 3 C. L. J. 575, In re Abdul Khan, 10 C. W. N. 1027, Akbar Ali Mahomed* v. *Emperor, I. L. R. 42 Calc. 706,* and *Kalu Mirza* v. *Emperor, I. L. R. 37 Calc. 91,* followed. *Queen-Empress* v. *Pirthi Pal Singh, (1898) All. W. N. 154, Emperor* v. *Tota, I. L. R. 25 All. 272, Emperor* v. *Ghulam Mustafa, I. L. R. 26 All. 371, Emperor* v. *Balwant, I. L. R. 27 All. 293, Bhawani Singh* v. *King-Emperor, 12 All. L. J. 1004, King-Emperor* v. *Parmeshar, 1 Cr. L. J. 459, Ramanand Singh* v. *King-Emperor, 8 Cr. L. J. 344, Jai Gobind* v. *Emperor, 13 Cr. L. J. 760, King-Emperor* v. *Kaim Khan, (1906) Punj. Rec. 18, Imperator* v. *Mahro. 10 Cr. L. J. 225, Emperor* v. *Kamal, 10 Cr. L. J. 239, Imperator* v. *Allahdino, 12 Cr. L. J. 410, Emperor* v. *Haji Usman, 11 Cr. L. J. 497, Piru Abdulla* v. *Emperor, 15 Cr. L. J. 378, Muhammad Ibrahim* v. *Emperor, 16 Cr. L. J. 100,* approved. Want of sufficient control over the person bound down is not a valid ground for the rejection of a surety. *Kalu Mirza* v. *Emperor, I. L. R. 37 Calc. 91, Siva Natha* v. *Emperor, 16 Bom. L. R. 138, Queen-Empress* v. *Rahim Bakhsh, I. L. R. 20 All. 206,* and *Sheikh Zikri* v. *Emperor, 12 All. L. J. 785,* referred to. RAYAN KHAN *v.* EMPEROR (1916) . . . **I. L. R. 43 Calc. 1024**

SURPRISE.

———— **doctrine of—**

See RIGHT OF REPLY.

I. L. R. 43 Calc. 426

SURRENDER.

See HINDU LAW—WIDOW.

I. L. R. 39 Mad. 1035

SURVEY MAPS.

See WASTE LANDS.

L. R. 43 I. A. 303

T

TAGAVI ADVANCE.

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).

I. L. R. 40 Bom. 483

TALUQDAR.

See OUDH ESTATES ACT (I OF 1869), SS. 8, 10 . **I. L. R. 38 All. 552**

TARWAD PROPERTY.

———— **incidents of—**

See MALABAR LAW.

I. L. R. 39 Mad. 317

TAXATION.

See ADEN SETTLEMENT REGULATION (VII OF 1900), S. 13.

I. L. R. 40 Bom. 446

TAXATION OF COSTS.

See COSTS . **I. L. R. 40 Bom. 588**

TEMPLE.

See OFFERINGS TO A TEMPLE.

See TRUSTEES OF A TEMPLE.

TEMPLE COMMITTEE.

———— **powers of—**

See RELIGIOUS ENDOWMENT ACT.

I. L. R. 39 Mad. 700

TEMPORARY INJUNCTION.

———— *Temporary injunction, subsequently dissolved—Order to be obeyed while it lasts—Order binding on party though it prohibits receiving payment from Government and Government authorised to pay by statute—Order operates in personam—Government's duty to ascertain and obey law—Question of construction, question for Courts.* Where in a suit for dissolution of partnership and accounts a Receiver of the partnership assets was appointed and a temporary injunction was granted restraining the defendants, *inter alia,* from receiving certain payments from Government and the Government which was no party to the suit made payments to one of the defendants in alleged exercise of power reserved to it by statute, and subsequently the injunction was dissolved, the plaintiff's case having failed: *Held,* that an injunction although subsequently discharged because the plaintiff's case failed, must be obeyed while it lasts. That although the injunction could not bind the Government not to pay or make the Government responsible for that obedience to the law which the Court was entitled to expect, the man who received in breach of the order was guilty of a contempt in no way cured by the payment by Government. The non-existence of any right to bring the Crown into Court such as exists in England by petition of right, and in many of the Colonies by the appointment of an officer to sue and be sued on behalf of the Crown, does not give the Crown immunity from all law, or authorise the interference by the Crown with private rights at its own mere will. There is a well-established practice in England in certain cases where no petition or right will lie, under which the Crown can be sued by the Attorney-General. *Dyson* v. *Attorney-General, [1911] 1 K. B. 410,* and *Burghes* v. *Attorney-General, [1912] 1 Ch. 173,* referred to. It is the duty of the Crown and of every branch of the Executive to abide by and obey the law. If there is any difficulty in ascertaining it, the Courts are open to the Crown to sue and it is the duty of the Executive in cases of doubt to ascertain the law in order to obey it, not to disregard it. The Government in this case having made the

TEMPORARY INJUNCTION—*concld.*

payment with notice of the Court's order: *Held*, that although with regard to the payments made under statutory powers, the action of the Executive might be justifiable, the question whether any particular sum mentioned in the contract in suit was payable as for "labour and supply" (so as to be within the Government's power to pay under the statute) was a question of construction and therefore of law for the Courts. That the proper course in the present case for the Executive would have been either to apply to the Court to determine the question of construction of the contract and to pay accordingly or to pay the whole amount over to the Receiver and to obtain an order from the Court on the Receiver to pay the sums properly payable according to the true construction of the contract. EASTERN TRUST COMPANY *v.* MACKENZIE MANN & Co., LD. (1915) . . . **20 C. W. N. 457**

TENANCY IN COMMON.

See JOINT ESTATE.
I. L. R. 43 Calc. 103

TENANT.

——— **suit to recover immoveable property from—**

See COURT FEES ACT (VII OF 1870), S. 7, CL. (*5*), SUB-CL. (*xi*) (*cc*).
I. L. R. 39 Mad. 873

TENANTS-IN-COMMON.

——— *Co-lessors—Lease by Mahomedan co-heirs—Mining lease —Forfeiture clauses—Lease determined by one lessor—Suit by one tenant-in-common in ejectment, maintainability of—Suit for whole or for share, maintainability of —Penal provisions, strict construction of—Relief against forfeiture—Covenants in a mining lease, exception to rule—English and American laws, rules of.* A tenant-in-common is entitled to sue for his share of the property demised, where a forfeiture has been incurred under the terms of the lease. *Sri Rajah Simhadri Appa Rao* v. *Prattipati Ramayya, I. L. R. 29 Mad. 29, Korapalu* v. *Narayana, 25 Mad. L. J. 315,* and *Ebrahim Pir Mahomed* v. *Cursetji Sorabji Desitre, I. L. R. 11 Bom. 644,* followed. *Gopal Ram Mohuri* v. *Dhakeswar Pershad Narain Singh, I. L. R. 35 Calc. 807,* dissented from. Though the aim of law generally is in favour of giving relief against forfeiture in the case of leases, in the case of mining leases a proviso for re-entry should be strictly construed and forfeiture cannot ordinarily be relieved against. English and American law considered. *Doe* v. *Church Wardens of Rugeby, 6 Q. B. 107,* and *Doe d. Lyod* v. *Ingleby, 15 M. & W. 465 ; 153 E. R. 953,* followed. *Balambhat* v. *Vinayak Ganpat Rav, I. L. R. 35 Bom. 239,* referred to. SYED AHMAD *v.* MAGNESITE SYNDICATE, LTD. (1916)
I. L. R. 39 Mad. 1049

TESTATOR.

——— **domiciled abroad—**

See LIMITATION . **L. R. 43 I. A. 113**

THAK MAP.

——— *Value of, as evidence—Thak maps of 1852, if to be presumed as unreliable.* Thak maps have always been considered by Courts as good evidence, and although the value of a Thak map depends upon its accuracy there is no presumption that Thak maps must be inaccurate. Opinion of Captain Hirst in his "Notes on the old Revenue Surveys" and *Jagadindra Nath Roy* v. *Secretary of State for India, L. R. 30 I. A. 44 :* S. C. *I. L. R. 30 Calc. 291 ; 7 C. W. N. 193,* referred to. KRISHNA KALYANI DASI *v.* R. BRAUNFELD (1915) . **20 C. W. N. 1028**

THEFT.

See AGRA TENANCY ACT (II OF 1901), S. 124 . . **I. L. R. 38 All. 40**

THREATENING LETTER TO COURT.

See UNPROFESSIONAL CONDUCT.
I. L. R. 43 Calc. 685

THUMB IMPRESSIONS.

——— **evidentiary value of—**

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R. 43 Calc. 1128

TIME.

——— **extension of, for paying mortgage amount.**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXIV, RR. 3, 8.
I. L. R. 39 Mad. 882

——— **when of the essence of a contract—**

See CONTRACT ACT (IX OF 1872), S. 55.
I. L. R. 40 Bom. 289

TIME-LIMIT.

See CRIMINAL REVISION.
I. L. R. 43 Calc. 1029

TITLE.

See INSTRUMENT OF TITLE.
I. L. R. 40 Bom. 630

See LAND ACQUISITION.
20 C. W. N. 1028

——— **suit for declaration of—**

——— *Transfer of estate made to plaintiff by widow of Oudh Taluqdar in possession as heir of her husband—Transfer made with consent of all the then existing next reversioners—Refusal of revenue authorities to record name of plaintiff as proprietor—Title set up by defendant under alleged will of deceased Taluqdar which was found by first Court not to have been executed—Transfer found to be valid—Appeal by defendant and admission by him during hearing of appeal of his want of title—Practice—Failure to maintain appeal.* This appeal arose out of a suit which related to the transfer to the plaintiff of an impartible estate called Mahgawan by the widow of an Oudh Taluqdar in possession of his estate for a Hindu widow's interest under the Mitakshara law. The transfer was made with the consent of the only next reversioners in existence at the

TITLE—*concld.*

date of the execution of the deed of transfer who both attested it. The defendant set up a title under an alleged will of the deceased Taluqdar. In a suit brought for a declaration of the plaintiff's title to the estate in consequence of the refusal of the Revenue authorities to have his name recorded as proprietor, the Subordinate Judge held that the defendant had no title as the deceased husband had never executed the alleged will, and that the transfer to the plaintiff was valid. On the hearing of an appeal to the Judicial Commissioner's Court by the defendant, he admitted the correctness of the first court's decision as to his want of title. *Held*, that the Court of the Judicial Commissioner was wrong in then allowing the appeal and dismissing the suit on the ground that the widow had no power to transfer the estate. The defendant having no title had no interest which enabled him to support the appeal which should have been dismissed on his admission. CHANDRIKA BAKHSH SINGH *v.* INDAR BIKRAM SINGH (1916) . . . **I. L. R. 38 All. 440**

TITLE-DEEDS.

See MORTGAGE . **I. L. R. 43 Calc. 1052**

——— **deposit of—**

See MORTGAGE . **I. L. R. 43 Calc. 895**

TITLE PARAMOUNT.

——— **dispossession by—**

See RENT, SUIT FOR.

I. L. R. 43 Calc. 554

TORT.

See PRINCIPAL AND AGENT.

I. L. R. 43 Calc. 511

1. ——— *Negligence of servants of the Public Works Department—Suit against the Secretary of State for India in Council for damages, if maintainable—Stacking of gravel on a military road—Making and maintenance of roads—Governmental or Sovereign function—nature of—Non-liability of East India Company and Secretary of State for acts done in exercise of Sovereign powers—Exceptions—English and American Laws.* Plaintiff sued the Secretary of State for India in Council for damages in respect of injuries sustained by him in a carriage accident which was alleged to have been due to the negligent stacking of gravel on a road which was stated in the plaint to be a military road maintained by the Public Works Department of the Government. The defendant pleaded a general denial of liability. *Held*, that the plaintiff had in law no cause of action against the Secretary of State for India in Council. *Per* WALLIS, *C. J.*—In respect of acts done by the East India Company in the exercise of its sovereign powers it could not have been made liable for the negligence of its servants in the course of their employment. The provision and maintenance of roads, especially a military road, is one of the functions of Government carried on in the exercise

TORT—*contd.*

of its sovereign powers and is not an undertaking which might have been carried on by private persons. The liability of the Secretary of State for India in Council is similar to that of the East India Company. *P. & O. Co.* v. *Secretary of State for India, 5 Bom. H. C. R. App. 1*, followed, *Secretary of State for India* v. *Moment, 40. I. A.* 48, referred to; and *Vijaya Raghava* v. *Secretary of State for India, I. L. R. 7 Mad. 466*, doubted. *Per* SESHAGIRI AYYAR, *J.*—The analogy of the Crown in England has no application to the Secretary of State for India in Council. The principle that the Crown can be sued only for remedies contemplated by the Petition of Right is confined in its operation to the United Kingdom: and a general liability for torts is dependent upon the law of the particular dominion wherein the action is instituted. Under 21 and 22 Vict., cap. 106, the Secretary of State for India in Council is under the same liability as the East India Company was subject to. The East India Company had two distinctive functions which are even to-day exercised by the Government of India, namely (i) the exercise of sovereign rights, and (ii) the carrying on of transactions which could have been carried on by private individuals or trading corporations. In the former case, the East India Company was generally exempt from liability. The distinction between sovereign power and powers exercisable by private individuals is that in the former case no question of consideration comes in, whereas the essence of the latter is that some profit is secured or some special injury is inflicted in the exercise of the individual rights. The making and maintenance of roads is a Government or sovereign function. English and American Law on subject considered. THE SECRETARY OF STATE *v.* COCKCRAFT (1914)

I. L. R. 39 Mad. 351

2. ——— *Defamation—Suit for damages—Defamatory statement made and published outside British India—Defendant resident in British India—Suit in British India, if maintainable—Order of excommunication from caste passed by Raja of Cochin—Communication of, to the Kariasta of a Temple in British India—Transmission by Kariasta to Pattamalai—Publication, meaning of—Justification.* A Court in British India has jurisdiction to entertain a suit for damages for a personal tort committed by a person beyond the limits of British India, if he resides within the local limits of its jurisdiction at the time of the suit. This rule is in accordance with the principles of Private International Law recognized in England and the Code of Civil Procedure (Act V of 1908) indicates that the same rule is to be followed by the Courts in British India. When the cause of action alleged in a plaint is a personal tort committed outside the local limits of the jurisdiction of the Courts of British India, unless the act is wrongful according to the law both of British India and of the place where the act is committed, the suit will not be sustainable. *The M. Moxam, (1876) P. D. 107*

TORT—*concld.*

The Halley, L. R. 2 P. C. 193, Phillips v. *Eyre, L. R. 6 Q. B. 1,* and *Carr* v. *Francis, Davies & Co., [1902] A. C. 176,* followed. Publication in regard to libel and slander does not require communication to more persons than one; there need not be anything like publication in the common acceptance of the term. *King* v. *Burdett, 4 B. & Ald. 95,* and *Pullman* v. *Hill and Co., [1891] 1 Q. B. 524,* referred to. Where a subordinate officer received from his superior in the course of his official duty a copy of an order alleged to contain defamatory statements regarding the plaintiff, and transmitted the same in his turn (as he was bound to do) to his official subordinate *Held,* that he was not liable in damages for defamation against the plaintiff, as his action was justified in law. GOVINDAN NAIR *v.* ACHUTHA MENON (1915) . . **I. L. R. 39 Mad. 433**

TRADING WITH THE ENEMY.

See CONTRACT ACT (IX OF 1872), SS. 56 (2), 65 . **I. L. R. 40 Bom. 570**

See SALE OF GOODS.

I. L. R. 40 Bom. 11

TRAFFICKING IN OFFICES.

See CONTRACT . **I. L. R. 43 Calc. 115**

TRANSFER.

See PENAL CODE ACT (XLV OF 1860), S. 228 . **I. L. R. 38 All. 284**

See PRE-EMPTION . **I. L. R. 38 All. 361**

See TRANSFER OF PROCEEDINGS.

See TRANSFER OF SHARES.

——— **of decree for execution—**

See CIVIL RULES OF PRACTICE, R. 161 (*a*). **I. L. R. 39 Mad. 485**

——— **with consent of reversioners—**

See TITLE, SUIT FOR DECLARATION OF. **I. L. R. 38 All. 440**

TRANSFER OF DECREE.

See SPECIFIC PERFORMANCE. **I. L. R. 43 Calc. 990**

TRANSFER OF GOODS.

——— **to creditor.**

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), S. 57. **I. L. R. 39 Mad. 250**

TRANSFER OF MANAGEMENT.

See TRUSTEES OF A TEMPLE. **I. L. R. 39 Mad. 456**

TRANSFER OF PROCEEDINGS.

See DIVORCE ACT, (IV OF 1869), SS. 3, 16, 37, 44 . **I. L. R. 40 Bom. 109**

TRANSFER OF PROPERTY ACT (IV OF 1882).

——— **ss. 2 (d) 8, 36, 44, 52—**

See SUBSTITUTION OF PROPERTY AND SECURITY . **I. L. R. 39 Mad. 283**

——— **ss. 3, 78—**

See MORTGAGE . **I. L. R. 43 Calc. 1052**

——— **ss. 5, 6, 7 and 127**—*Minor—Validity of transfer in favour of a minor. Held,* that, inasmuch as there is nothing in the law to prevent a minor from becoming a transferee of immovable property, so a minor in whose favour a valid deed of sale has been executed is competent to sue for possession of the property conveyed thereby. *Ulfat Rai* v. *Gauri Shankar, I. L. R. 33 All. 657,* and *Raghunath Baksh* v. *Haji Sheikh Muhammad Baksh, 18 Oudh Cases 115,* referred to. *Mohori Bibee* v. *Dharmodas Ghose, I. L. R. 30 Calc. 539,* and *Navakotti Narayan Chetty* v. *Logalinga Chetty, I. L. R. 33 Mad. 312,* distinguished. MUNNI KUNWAR *v.* MADAN GOPAL (1915) . . . . **I. L. R. 38 All. 62**

——— **s. 6—**

See EXPECTANCIES. **I. L. R. 39 Mad. 554**

——— *Compromise of claim to possession of property of deceased person—Such compromise not a transfer of reversionary rights.* B claimed adversely to M the property left by M's deceased father. The claim was compromised, and B for a consideration of Rs. 5,000 and some immovable property, withdrew his claim and recognized the title of M as absolute owner. M, died, and the property passed to her husband K who sold part of it to S. *Held,* on suit by S to recover possession of the property so purchased, that the compromise by B of his claim against M was not obnoxious to the prohibition contained in s. 6 of the Transfer of Property Act, 1882, as being a sale of reversionary rights. *Mohammad Hashmat Ali* v. *Kaniz Fatima, 13 All. L. J. 110,* referred to. BARATI LAL *v.* SALIK RAM (1915) **I. L. R. 38 All. 107.**

——— **s. 6, cl.** (*a*)—

See OFFERINGS TO A TEMPLE. **I. L. R. 43 Calc. 28**

——— **s. 40**—*Specific Relief Act (I of 1877), s. 3—Indian Trusts Act (II of 1882), s. 91—Suit for declaration and possession—Sale—Prior agreement of purchase—Notice—Subsequent purchaser, a trustee.* Plaintiff sued for a declaration of title to and for possession of immoveable property from the defendant. He based his title upon a registered sale deed dated the 5th December 1911 from one N. Prior to this date the plaintiff had notice of the execution of a contract of sale of the same property by N to the defendant. The defendant relied upon his possession under the contract of sale and contended that he had paid to N portion of the purchase money agreed upon and the balance was to be paid after tha-

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd.*

——— **s. 40**—*concld.*

sale deed was passed. Both the lower Courts allowed the plaintiff's claim for possession though it was found that the plaintiff had notice of the defendant's contract of sale and that nearly half the purchase money was in fact received by N from the defendant under the contract. The defendant having appealed. *Held*, that the plaintiff having purchased with notice of the defendant's contract, his suit for possession must fail. He stood in the position of a trustee for the defendant of the land purchased by him and could not profit by his conveyance except to stand in the shoes of his vendor and receive the balance of the purchase money due, on payment of which he would have to convey to the defendant. *Lalchand* v. *Lakshman, I. L. R. 28 Bom. 466.* and *Kurri Veerareddi* v. *Kurri Bapireddi, I. L. R. 29 Mad. 336*, doubted. GANGARAM *v.* LAXMAN GANOBA (1916) . **I. L. R. 40 Bom. 498**

——— **s. 41**—

1. ——— *Husband's property sold by wife—Bonâ fide purchaser for value, "without notice"—His rights—"Without notice," significance of the expression—Husband's right to redemption.* Where, during the husband's absence on pilgrimage, the wife sold a piece of land, which had before the husband's departure been mortgaged by her the purchaser who paid off the mortgage having by proper enquiries satisfied himself that the wife was owner: *Held*, that the husband could not recover the land, nor was he entitled to be allowed to redeem the mortgage. NIRAS PURBE *v.* TETRI PASIN (1915) **20 C. W. N. 103**

2. ——— *Ostensible owner, transfer by when binds real owner—Res judicata.* In a suit by A to recover from B property the title to which was disputed between A and B, M in whose favour B had on 14th March 1893 executed a usufructuary mortgage—in lieu whereof on 21st January 1895 another mortgage was executed in his favour by B—was made a defendant apparently on the ground of his being a transferee under the mortgage of 14th March 1893. The suit was decreed. In a suit by M to enforce his mortgage of 21st January 1895, which the representative in title of A contested, the High Court held that the decision in the previous suit was *res judicata*; and also that s. 41 of the Transfer of Property Act did not apply to give M a title, although B had got his name entered in the Revenue papers as owner, because the application for the entry having been opposed by A, B could not be said to have been entered as ostensible owner with A's consent, and also because if M had made enquiries before he advanced money to B, he could have discovered the fact of B's opposition and facts showing B's title. The Judicial Committee on appeal found the judgment of the High Court to be so satisfactory and sufficient that they felt themselves justified

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd.*

——— **s. 41**—*concld.*

in advising the dismissal of the appeal without following the practice of making an elaborate report. NAGESHAR PRASAD PANDE *v.* PATESHRI PARTAB NARAIN SINGH (1915) **20 C. W. N. 265**

——— **s. 48, cl.** (c)—

See CONSTRUCTION OF DOCUMENT. **I. L. R. 40 Bom. 378**

——— **s. 53**—*Debtor and Creditor—Suit to set aside deed as being void as delaying or defeating creditors—Deed made on good consideration—Preference by debtor to one creditor rather than another where debtor retains no benefit for himself.* In this appeal their Lordships of the Judicial Committee upheld the decision of the High Court, which is reported in I. L. R. 34 Calc. 999, at page 1003. The transfer which defeats or delays creditors is not an instrument which prefers one creditor to another, but an instrument which removes property from the creditors for the benefit of the debtor. The debtor must not retain a benefit for himself. He may pay one creditor, and leave another unpaid. *In re Moroney, L. R. 21 Ir. 27*, and *Middleton* v. *Pollock, L. R. 2 Ch. D. 104*, followed. When it was found that the transfer impeached was made for adequate consideration in satisfaction of genuine debt and without reservation of any benefit to the debtor, it followed that no ground for impeaching it lay in the fact that the plaintiff (appellant), who also was a creditor, was a loser by payment being made to the preferred creditor—there being in the case no question of bankruptcy. MUSAHAR SAHU *v.* LALA HAKIM LAL (1915) . **I. L. R. 43 Calc. 521**

——— **s. 54**—

See SALE . **I. L. R. 43 Calc. 790**

1. ——— *Agreement to sell land not creating any interest therein—Rule of perpetuities, not offending—Specific Relief Act (I of 1877), s. 27(b)—Indian Contract Act (IX of 1872), s. 37.* A contract to convey or reconvey immoveable properties *whenever demanded*, for a certain amount is only a personal contract and does not create any interest in immoveable property and is therefore enforceable and not void as contravening the rule against perpetuities. *South-Eastern Railway* v. *Associated Cement Manufacturers, Limited*, [*1910*] *1 Ch. 12, 33*, followed. *Kolathu Ayyar* v. *Ranga Vadhyar, I. L. R. 38 Mad. 114*, distinguished. *Per* CURIAM: —The contract is also enforceable according to s. 37 of the Indian Contract Act (IX of 1872) against the representatives of the contracting parties. CHARAMUDI *v.* RAGHAVULU (1915) **I. L. R. 39 Mad. 462**

2. ——— *Sale-deed of property in possession of tenants—Deed should be registered.* A house which was in the possession of defendants as tenants was sold to them by the owner in 1909 for Rs. 50 by an unregistered deed of sale. It was again sold in 1910 by the owner to the plaint-

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd.*

——— **s. 54**—*concld.*

iff by a registered sale-deed. The plaintiff having sued to recover possession. *Held*, that the defendants were entitled to set up their sale-deed to defeat the plaintiff's claim; for the deed though earlier in point of time required registration, as the only interest which the vendor had at the date of the sale was a 'reversion' in the house, within the meaning of s. 54 of the Transfer of Property Act (IV of 1882). BHASKAR GOPAL *v.* PADMAN HIRA (1915)
I. L. R. 40 Bom. 313

3. ——— ——— ——— *Transfer of immoveable property of less than Rs. 100 in value to mortgagee with possession on failure to pay off mortgage—Oral transfer—Delivery of possession, necessity of—Formal delivery.* Where immoveable property of less than Rs. 100 in value was first mortgaged to A with possession, and then on mortgagor's failure to pay up the mortgage amount, the latter on 5th March 1906 orally sold the property to A, and at the same time formally delivered possession by pointing out boundaries, by endorsing on the back of the mortgage bond the fact of the sale and by handing it over to A; and the mortgagor later on, on 6th June 1906, sold the property to B by a registered deed: *Held*, that everything that could be done to deliver possession to give effect to the sale of 5th March 1906 was done, and the requirements of s. 54 of the Transfer of Property Act having thus been satisfied, title passed to A and B's suit to recover the property from A must fail. *Sibendrapada Banerjee* v. *Secretary of State for India, I. L. R. 34 Calc. 207*, distinguished. SONAI CHUTIA *v.* SONARAM CHUTIA (1915) . . . . **20 C. W. N. 195**

——— **ss. 54, 55**—

See MINOR . **I. L. R. 38 All. 154**

——— **s. 55** (*4*)—*Sale of land—Vendor and purchaser—Vendor's direction to pay purchase money to a third party on his behalf—Existence of vendor's lien, in spite of.* A contract to forego the vendor's charge for unpaid purchase money is not to be necessarily inferred when the whole or part of the consideration for the purchase of immoveable property is agreed to be paid by the purchaser to a third party on behalf of the vendor. *Abdulla Beary* v. *Mammali Beary, I. L. R. 33 Mad. 446*, and *Sivasubramania Mudaliar* v. *Gnana Sambanda Pandarah Sannadhi, 21 Mad. L. J. 359*, overruled. *Webb* v. *Macpherson, I. L. R. 31 Calc. 57*, referred to. SIVASUBRAMANIA AYYAR *v.* SUBRAMANIA AYYAR (1916)
I. L. R. 39 Mad. 997

——— **s. 55** (*4*) (*b*)—*Sale—Vendor's lien—Lien not enforceable against subsequent purchaser without notice.* The vendor's lien for unpaid purchase money provided for by s. 55 (*4*) (*b*) of the Transfer of Property Act, 1882, cannot be enforced against the property in the hands of subsequent transferees for value without notice of

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd.*

——— **s. 55**—*concld.*

the lien. *Webb* v. *Macpherson, I. L. R. 31 Calc. 57*, distinguished. GUR DAYAL SINGH *v.* KARAM SINGH (1916) . . **I. L. R. 38 All. 254**

——— **s. 57**—

See MORTGAGES . **I. L. R. 39 Mad. 419**

——— **ss. 58, 60, 98**—

——— ——— ——— *Possessory mortgage in 1894 for one year with a covenant to treat it as sale, in default of payment—Anomalous mortgage—No right to redeem after one year.* A document of 1894, which was described as a "Swadina Tanaka Meddatu Sharatu Pattiram" which may be translated as a possessory mortgage deed containing a condition for a period fixed, contained among others, the following terms: "within these limits a house-site together with a thatched house thereon we have mortgaged, that is, we have kept it as a possessory mortgage and have received Rs. 10 from you. So having paid the principal and interest pertaining to these Rs. 10 within the end of a year from the said date we shall take possession of our house and site. If we do not act according to the said condition we shall quit the land and house as if this is a sale." In a suit for redemption brought after the date fixed for redemption: *Held*, that the transaction was as an anomalous mortgage as described in s. 98 of the Transfer of Property Act (IV of 1882), that the rights of the parties were governed by the terms of the mortgage document and that accordingly the plaintiff had no right to redeem after the period of one year fixed by the document. The right of redemption given by s. 60 of the Transfer of Property Act to every mortgagor has no application to cases governed by s. 98 of that Act. *Sreenivasa Iyengar* v. *Radakrishna Pillai, I. L. R. 38 Mad. 667*, referred to. *Usman Khan* v. *Dasanna, I. L. R. 37 Mad. 545* distinguished. HAKEEM PATTE MUHAMMAD *v.* SHAIK DAVOOD (1916) . **I. L. R. 39 Mad. 1010**

——— **s. 59**—

1. ——— ——— ——— *Attestation—Document attested by one witness only—Mortgage—Charge.* A document purporting to be a deed of mortgage bore the signature of one attesting witness; and the name of another person was written on the margin by the scribe, but there was no signature or mark made by this second person. In a suit brought upon the document after his death, it was *held* that the document was not duly attested by two witnesses within the meaning of s. 59 of the Transfer of Property Act, inasmuch as there was nothing to show that the person whose name appeared on the document as an attesting witness had authorised the scribe to sign it for him and therefore it could neither operate as a mortgage nor create a charge on immovable property. PARAM HANS *v.* RANDHIR SINGH (1916) . . . . **I. L. R. 38 All. 461.**

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd.*

——— **s. 59**—*concld.*

2. ——— *Mortgage-bond—Attestation—Person subscribing as scribe if attesting witness. Per* CHAMIER, *C. J.*—To be an attesting witness within the meaning of s. 59 of the Transfer of Property Act, the witness must not only have seen the execution of the document but should have also subscribed as a witness. *Shamu Patter* v. *Abdul Kadir, L. R. 39 I. A. 218 :* s. c. *I. L. R. 35 Mad. 607 : 16 C. W. N. 1000, Raj Narain Ghose* v. *Abdur Rahim, 5 C. W. N. 454, Dinamoyi Debi* v. *Bon Behari Kapur, 7 C. W. N. 160,* and *Badri Prasad* v. *Abdul Karim, I. L. R. 35 All. 254,* referred to. Where a person who subscribed a mortgage bond as scribe was proved to have been present when the document was executed and the lower Appellate Court upon this and other evidence found that he had seen the document executed and held that he was an attesting witness within the meaning of s. 59 of the Transfer of Property Act: *Held, per* CHAMIER, *C. J.*—That although on the finding he must be held to have seen the mortgage-deed executed, the scribe was not an attesting witness as he did not subscribe as a witness. *Per* JWALA PRASAD, *J.*—That in the absence of evidence showing that he had witnessed the execution it could not be presumed that he had. A scribe of a deed who has witnessed the execution may sign the deed because he has done so, and yet describe himself as a scribe. RAM BAHADUR SINGH *v.* AJODHYA SINGH (1916)

20 C. W. N. 699

——— **ss. 60, 67—93**—*Suit for redemption—Previous suit by mortgagee for sale—Decree for sale—Decree in favour of mortgagor as defendant, for redemption and recovery of possession in execution—Decree, not executed by mortgagee or mortgagor—Suit for redemption by mortgagor, maintainability of—Res judicata.* Where a mortgagee sued for sale on a mortgage bond of 1864 and obtained a decree in 1872 which contained a provision, in favour of the mortgagor who was a defendant therein, for redemption and recovery of possession of the mortgaged lands in execution of the decree but the decree was not executed by either party: *Held,* that a fresh suit instituted by the mortgagor for redemption of the mortgage was barred by the rule of *res judicata. Vedapuratti* v. *Vallabha Valiya Raja, I. L. R. 25 Mad. 300,* and *Adipuranam Pillai* v. *Gopalasami Mudali, I. L. R. 31 Mad. 354,* referred to. *Rama* v. *Bhagchand, I. L. R. 39 Bom. 41,* dissented from. RANGA AYYANGAR *v.* NARAYANA CHARIAR (1915)

I. L. R. 39 Mad. 896

——— **s. 65** (*c*)—*Duty of a mortgagor in possession to pay public charges, purely personal—Acquisition of equity of redemption by trespasser—Non-payment of public revenue and purchase by trespasser in revenue sale—Extinguishment of mortgage.* The implied covenant on the part of the mortgagor in possession mentioned in s. 65, cl. (*c*) of the Transfer of Property Act (IV of 1882), to pay all public charges is in the nature of a personal covenant and is not one arising by virtue of his being in possession of the mortgaged property. Hence, if after the creation of a simple mortgage, a stranger acquires the equity of redemption by adverse possession as against the mortgagor, the acquirer is under no duty towards the mortgagee to pay the public revenue payable on the property ; and therefore, if after allowing it to be sold for arrears of revenue, he buys it himself, he holds it free from the mortgage. The rule that no man can take advantage of his fraud does not apply to a case like this, where the party charged with fraud does not stand in any fiduciary relation to, or has a joint interest with, the person defrauded and is under no duty to protect his interests. *Nawab Sidhee, Nuzur Ally Khan* v. *Rajah Ojoodhyaram Khan, 10 Moo. I. A. 540,* distinguished. *Quære :* Whether an assignee for value from the mortgagor is affected by the mortgagor's covenant to pay the public charges ? SUBBIAH *v.* RAMI REDDI (1916)

I. L. R. 39 Mad. 959

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd.*

——— **s. 65**—*concld.*

——— **s. 67, cl.** (*d*)—

See MORTGAGE . **I. L. R. 39 Mad. 17**

——— **s. 76, cl.** (*c*)—

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)

I. L. R. 40 Bom. 483

——— **s. 83**—*Usufructuary mortgagee—Hypothecation—Deposit of usufructuary mortgage amount only—Refusal by mortgagee—Subsequent deposit of hypothecation amount—Compound interest at enhanced rate—Penalty—Deposit of compound interest at the original rate only, sufficiency of—Acceptance by Court, as reasonable compensation, effect of—Mesne profits claim for, by plaintiff from date of deposit, if sustainable.* The plaintiff, as the vendee of certain lands which were subject to a usufructuary mortgage as well as a hypothecation in favour of the defendant sought to recover the property on payment into Court of the amount due under the usufructuary mortgage under s. 83 of the Transfer of Property Act. The defendant claimed that the plaintiff should deposit the sum due under the hypothecation bond also. The plaintiff paid subsequently into Court an amount as due for principal and interest on the latter bond, but calculated compound interest at the original rate and not at the enhanced rate after default as mentioned in the bond, disputing the provision as penal. The Court held the provision to be penal and accepted the amount paid for interest as reasonable compensation. The plaintiff claimed mesne profits from the date of his first deposit, but the defendant disputed his right to any mesne profits as the plaintiff did not deposit the full amount specified in the bond. *Held,* (i) that the plaintiff was bound to deposit the

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd.*

——— **s. 88**—*concld.*

amounts due under both the bonds; and (ii) that the plaintiff was not bound to deposit the penal rate of interest but that the payment of an amount as reasonable compensation which was accepted by the Court as proper, was legally sufficient to entitle the plaintiff to mesne profits from the date of the second deposit. AYYAKUTTI MARKONDAN *v.* PERIYASWAMI KAVUNDAN (1915)

I. L. R. 39 Mad. 579

——— **ss. 88, 89**—*Civil Procedure Code (Act XIV of 1882), s. 244—Limitation Act (XV of 1877), Sch. II, Arts. 178, 179—Civil Procedure Code (Act V of 1908), s. 97, O. XXXIV, rr. 1 and 5—Order passed under s. 88 of the Transfer of Property Act if not appealed against cannot be questioned in an appeal from the decree absolute for sale.* In 1907, a suit was filed to recover the mortgage amount by sale of the mortgaged property. A preliminary decree was passed on the 30th of June 1910, as contemplated by O. XXXIV, r. 4, of the Civil Procedure Code (Act V of 1908), ordering among other things, defendants Nos. 1 and 2 to pay the mortgage amount within six months to the plaintiff and in default, directing a sale of the mortgaged property. The payment was not made; and a final decree for sale was made on the 15th March 1912. Defendant No. 1 appealed against the decree of 1912, and raised substantially points against the decree of 1910. The lower appellate Court held that the defendant not having appealed against the preliminary decree within time, was precluded, by s. 97 of the Civil Procedure Code (Act V of 1908), from disputing its correctness in an appeal preferred from the final decree. The defendant appealed to the High Court contending that the suit having been filed in 1907, the right of appeal which he had under the Civil Procedure Code of 1882 was not taken away by the Civil Procedure Code of 1908: *Held*, that whether an order absolute for sale was treated as an order falling under s. 244 of the Civil Procedure Code (Act XIV of 1882) and appealable on that footing or not, it was quite clear that even under the Civil Procedure Code of 1882 the correctness of the decree under s. 88 of the Transfer of Property Act (IV of 1882), corresponding with O. XXXIV, r. 4 of the Civil Procedure Code of 1908, could not be questioned in an application for an order absolute under s. 89 or in an appeal from an order absolute made on such an application. MURLIDHAR NARAYAN *v.* VISHNUDAS (1915) . . **I. L. R. 40 Bom. 321**

——— **s. 90**—

See SUIT TO SET ASIDE A DECREE.

I. L. R. 38 All. 7

——— **s. 95**—

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 134, 144.

I. L. R. 38 All. 138

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd.*

——— **ss. 105, 107**—*Agreement to let land on payment of annual rent—Construction of building in reliance on agreement—Licence—Remedy of licensee for wrongful eviction.* The defendant's father gave the plaintiffs permission to build a *gola*, or market place, on a certain plot of land, the latter agreeing to pay Rs. 6 a year as ground rent; but no lease was executed. The plaintiffs began to build the *gola*, but before it was finished they were evicted by the owner of the land. *Held*, on suit by the plaintiffs for possession and for an injunction to prevent the defendant from interfering with the *gola*, that the plaintiffs were not lessees, but merely licensees, and that their remedy if any was by way of a suit for damages for the wrongful revocation of their licence. BASDEO RAI *v.* DWARKA RAM (1915) . **I. L. R. 38 All. 178**

——— **ss. 106, 107**—*Land held not for agricultural or manufacturing purpose on oral settlement at an annual rent—Presumption that tenancy annual—"Contract to the contrary," not valid, because not registered—Notice, length of.* Where, there being no written lease, the tenants were found to have been holding the land on an annual rent of Rs. 15 and not for an agricultural or manufacturing purpose: *Held*, that from the fact that the rent was an annual rent, the presumption ought to be drawn that the tenancy was an annual tenancy. That, in the absence of anything to rebut the presumption, s. 106 of the Transfer of Property Act, if it stood alone, would be inapplicable, there being "a contract to the contrary" within the meaning of that section. This contract, however, not being in writing and registered was invalid under s. 107. That the tenancy was therefore terminable under s. 106 on fifteen days' notice expiring with the end of a month of the tenancy. *Durgi Nikarini* v. *Goberdhan Bose, 19 C. W. N. 525:* s. c. *20 C. L. J. 448, 454*, referred to. AKLOO *v.* EMANON (1916)

20 C. W. N. 1005

——— **ss. 108** (j), **2** (c)—*Lease from year to year in existence from before 1882—Transferability—Custom—Onus—Sublease, transfer by way of—Landlord if may recover khas possession.* A lease of homestead land from year to year which was in existence before the passing of the Transfer of Property Act is not governed by that Act and s. 108, cl. (*j*) of that Act does not make it transferable absolutely or by way of sub-lease. Such leases are not transferable except by custom, the burden of proving which is on the party who sets it up. Whether a tenant from year to year had power before the Transfer of Property Act to transfer the holding by way of sub-lease or not, where it appeared that the tenant had abandoned the lands without arranging for payment of rent, and no rent had been paid by him since the *ijara*, and that the transaction was in substance though not in form an assignment: *Held*, that the landlord was entitled to recover *khas* possession of the land. ANANDA MOHAN SAHA *v.* GOBINDA CHANDRA RAY CHOUDHURY (1915)

20 C. W. N. 322

TRANSFER OF PROPERTY ACT (IV OF 1882) —*concld.*

——— **ss. 123, 129**—*Gift—Validity of gift of immovable property—Mahomedan law.* Where a Mahomedan had made a gift of immovable property which was valid according to Mahomedan law, it was *held* that the gift was none the less valid because the donor had executed a deed of gift purporting to convey the property to the donee, which owing to a defect in the attestation, was invalid according to the provisions of the Transfer of Property Act, 1882. KARAM ILAHI *v.* SHARF-UD-DIN (1916) **I. L. R. 38 All. 212**

TRANSFER OF SHARES.

See COMPANIES ACT (VI OF 1882), SS. 58, 147 . . **I. L. R. 40 Bom. 134**

TRANSFERABILITY.

See OFFERINGS TO A TEMPLE. **I. L. R. 43 Calc. 28**

TRANSFEREE.

See DEPOSIT IN COURT. **I. L. R. 43 Calc. 100**

——— **of trust estate, liability of—**

See TRUSTEE . **I. L. R. 39 Mad. 115**

TRESPASS.

——— *Trespass, action for—Who may sue, tenant or owner—Title by adverse possession not pleaded, if may be allowed in the Court of Appeal—Civil Procedure Code (Act V of 1908), O. XLI, r. 24—Adverse possession against Municipality or the Crown. Per* SANDERSON, *C. J.*, and MOOKERJEE *J.*—The tenant is the proper plaintiff to sue for trespass committed in respect of the land, and the reversioner can only sue for trespass if the alleged trespass is injurious committed in respect of the land, and to the reversion. *Per* SANDERSON, *C. J.*—Even though the trespass is accompanied by a claim of right, it is not necessarily injurious to the reversionary estate. *Baxter* v. *Taylor, 4 Barn. & Ad. 72,* referred to. *Per* WOODROFFE, *J.*—It is not sufficient for the plaintiff in an action in ejectment to prove possession. He must show title. *Per* MOOKERJEE; *J.*—Mere previous possession will not entitle a plaintiff to a decree for recovery of possession, except in a suit under s. 9 of the Specific Relief Act. *Purmeshwar* v. *Brojolal, I. L. R. 17 Calc. 256, Nishachand* v. *Kanchiram, I. L. R. 26 Calc. 579 : s.* c. *3 C. W. N. 568, Shama Charan* v. *Abdool, 3 C. W. N. 158,* and *Manik Borai* v. *Banicharan, 13 C. L. J. 649,* referred to. The plaintiff may be allowed to succeed on a title by adverse possession pleaded for the first time in the Court of Appeal, provided such a case arises on the facts stated in the plaint and the defendant is not taken by surprise. *Sundari Dossee* v. *Madhu Chunder, I. L. R. 14 Calc. 592, Vasudeva* v. *Maguni, L. R. 28 I. A. 81, 88 :* s. c. *5 C. W. N. 545, Majkal* v. *Thanbuswamy, (1914) Mad. W. N. 784, Somasundarum*

TRESPASS—*concld.*

v. *Vadivelu, I. L. R. 31 Mad. 531, Shirokumari* v. *Govind Shaw, I. L. R. 2 Calc. 418, Joytara* v. *Mahomed Mobaruck, I. L. R. 8 Calc. 975,* and *Bijoya* v. *Bydonath, 24 W. R. 444,* referred to. To establish a title by adverse possession, the plaintiff must prove enjoyment possessing the same characteristics as are necessary for presumption of a lost grant and consequently that the possession was adequate in continuity, in publicity and in extent, to extinguish the title of the true owner. *Subramania* v. *Secretary of State, 21 Mad. L. J. 132,* and *Radhamani* v. *Collector of Khulna, I. L. R. 27 Calc. 943 :* s. c. *4 C. W. N. 593, 690,* referred to. *Per* WOODROFFE, *J.*—Where in a suit for declaration of title and possession, the plaintiff did not in the alternative plead title by adverse possession, the plaintiff cannot ask the Court to frame such an issue on appeal except by amendment, and O. LXI, r. 24, which authorises the Court to remodel the issues does not apply to such a case. RAM CHANDRA SIL *v.* RAMANMANI DASI (1916) **20 C. W. N. 773**

TRESPASSER.

——— **purchase by—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 65 (*c*) . **I. L. R. 39 Mad. 959**

TRIAL.

See JOINT TRIAL.

See SUMMARY TRIAL. **I. L. R. 39 Mad. 942**

TRUST.

See CHARITABLE OR RELIGIOUS TRUST. **I. L. R. 40 Bom. 439**

See CHARITABLE TRUST.

See MAHOMEDAN LAW—GIFT. **I. L. R. 38 All. 627**

See MORTGAGE . **I. L. R. 38 All. 209**

See RESULTING TRUST. **I. L. R. 40 Bom. 341**

See WILL . . **I. L. R. 38 All. 214**

TRUSTEE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 92 . **I. L. R. 40 Bom. 439**

——— **appointment of—**

See MAHOMEDAN LAW—ENDOWMENT. **I. L. R. 43 Calc. 1085**

——— **compromise of suit by—**

See TRUSTEE . **I. L. R. 39 Mad. 115**

——— **suit by, against co-trustee—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 92 . **I. L. R. 40 Bom. 439**

——— *Trustee of Ramnad Estate—Discretion of trustees—Powers improperly and unreasonably exercised—Liability of transferee of trust estate—Compromise of suit by trustee—Decree ordering party benefiting by breach of Trust to*

TRUSTEE—*concld.*

repay benefit—Compromise where minor is party to suit—Civil Procedure Code (Act XIV of 1882), s. 462. In the suit out of which this appeal arose the plaintiff (respondent) was the minor Raja of Ramnad. The first defendant (appellant) was a creditor of the late Raja and the party in whose favour the three instruments which the suit sought to set aside were made. The second defendant was the trustee appointed under a deed of settlement executed by the late Raja on 12th July 1895. The suit was brought for a declaration that an agreement of 16th January 1899 between the appellant and the trustee, and two mortgages of 6th and 13th July 1899 executed by the trustee in favour of the appellant were invalid, and for an order that a sum of Rs. 43,000 paid under those instruments should be repaid by the appellant to the credit of the trust estate. The validity of the deeds was largely dependent on the consideration of whether the trustee under the voluntary settlement of 12th July 1895 had power to give a mortgage bond for four lakhs of rupees on the security of a suitable portion of the Ramnad estate to the then Raja of Ramnad. *Held*, by the Judicial Committee (upholding the decision of the High Court), that on the evidence and the construction of the settlement, and under the circumstances of the case, the power of the trustee was not exercised properly and reasonably, and in the interest of the trust estate; that the deed of compromise was therefore not valid; and that being so the mortgages could not be regarded as valid and binding on the properties therein comprised. Their Lordships concurred in the conclusions of the High Court both as to the validity of the deed of compromise and of the two mortgages, and as to the amount of the repayment ordered to be made by the appellant to the credit of the trust estate. Even if the deed of compromise could be supported on other grounds it was invalid as not complying with the condition imposed by s. 462 of the Civil Procedure Code, 1882, in that, one of the parties to the suit being a minor, the sanction of the Court to the making of the compromise had not been obtained. *Manohor Lal* v. *Jadu Nath Singh, I. L. R. 28 All. 585, 589; L. R. 33 I. A. 128, 131, Per* Lord MACNAGHTEN, and *Ganesha Row* v. *Tuljaram Row, I. L. R. 36 Mad. 295, L. R. 40 I. A. 132,* followed. SUBRAMANIAN CHETTIAR *v.* RAJA RAJESWARA DORAI (1915).

I. L. R. 39 Mad. 115

TRUSTEES ACT (XV OF 1866).

———— **ss. 8, 20, 32—**

See RECEIVER . **I. L. R. 43 Calc. 124**

TRUSTEES, DE FACTO.

See TRUSTEES OF A TEMPLE.

I. L. R. 39 Mad. 456

TRUSTEES OF A TEMPLE.

———— *Transfer of management—Void or voidable—Setting aside, if necessary*

TRUSTEES OF A TEMPLE—*contd.*

—Suit by trustees to recover temple properties and for account—Indian Limitation Act (IX of 1908), Art. 91 or 124, applicability of—Some trustees, joined as defendants—Denial of their title by plaintiffs—Abandonment of the denial—Decree in favour of plaintiffs and defendants, if can be given—De facto trustees—Expenses during management—Right for reimbursement—Right to retain possession of trust property—Indian Trusts Act (II of 1882), s. 32—Decree for possession and for account—Provision for account of expenses incurred in the final decree. The plaintiffs, who were the *hukdars* (trustees) of a temple, brought the suit on the 30th January 1911 to recover possession of the temple properties from the defendants to whom the trustees had made over the management of the temple under an agreement dated 21st June 1901. The plaintiffs alleged in the plaint that the ninth and the tenth defendants (who were also originally *hukdars*) had lost their right to the office owing to their neglect to discharge its duties and that they were joined as defendants merely because they asserted a right to it. But at the trial in the original Court the plaintiffs abandoned this contention. The defendants contended, *inter alia*, that the suit was bad for non-joinder of all the trustees as plaintiffs and was barred under art. 91 of the Limitation Act, and that the defendants were entitled to be reimbursed out of the trust properties for expenses properly incurred by them during their management and to retain possession of the properties until they were so reimbursed. The lower Court passed a decree in favour of the plaintiffs and the ninth and the tenth defendants for possession and a preliminary decree for accounts against the defendants. *Held*, that the objection as to non-joinder was not sustainable, but that a decree could be passed in favour of the plaintiffs and the ninth and the tenth defendants as trustees with the consent of the latter and the other defendants. *Kokilasari Dasi* v. *Mohunt Rudranand Goswami, 5 C. L. J. 527,* distinguished. The transfer to the defendants being void, did not require to be set aside. Art. 91 of the Limitation Act did not apply to the suit but Art. 124 was the Article that was applicable, and under that Article the suit was not barred. *Malkarjun* v. *Narhari, I. L. R. 25 Bom. 337,* followed. *Gnanasambhanda Pandara Sannadhi* v. *Velu Pandaram, I. L. R. 23 Mad. 371,* explained. *Sidhu Salu* v. *Gopicharan, 17 C. L. J. 233,* referred to. A trustee of a public charitable endowment, like a trustee of a private trust is entitled to reimburse himself all expenses properly incurred in connection with the trust, and has a first charge enforceable only by prohibiting any disposition of the trust property without previous payment of such expenses—not, that is to say, in the ordinary way by sale of the property subject to such charge. It is the duty of the Court especially in the case of a public charitable trust to take the trust property out of the possession of persons not entitled to hold it, while making due possession for any claims that they may have in respect of expendi-

TRUSTEES OF A TEMPLE—*concld.*

ture properly incurred in connection therewith. *Held*, consequently, that the defendants were not entitled to retain possession of the suit properties, but that the preliminary decree should direct that accounts should be taken as to what was due to the defendants from the trust, leaving it to be determined by the final decree how such claim, if established, should be enforced. NARAYANAN *v.* LAKSHMANAN (1915).

I. L. R. 39 Mad. 456

TRUSTS ACT (II OF 1882).

——— **ss. 32—**

See TRUSTEES OF A TEMPLE.

I. L. R. 39 Mad. 456

——— **s. 42—**

See TRUST . **I. L. R. 39 Mad. 597**

——— **s. 83—**

See SETTLEMENT BY A HINDU WOMAN ON TRUSTS . **I. L. R. 40 Bom. 341**

——— **s. 90—**

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).

I. L. R. 40 Bom. 483

——— **s. 91—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 40 . **I. L. R. 40 Bom. 498**

U

ULTRA VIRES RULES.

See ADEN SETTLEMENT REGULATION (VII OF 1900), S. 13.

I. L. R. 40 Bom. 446

UNAUTHORISED ACT.

See PRINCIPAL AND AGENT.

I. L. R. 43 Calc. 511

UNCONSCIONABLE INTEREST.

See INTEREST . **I. L. R. 43 Calc. 632**

UNDEFENDED SUIT.

See EX PARTE DECREE.

I. L. R. 43 Calc. 1001

UNDER-RAIYAT.

See LANDLORD AND TENANT.

I. L. R. 43 Calc. 164

——— *Status of under-raiyat where raiyat evicted from occupancy-holding for non-payment of rent in Chota Nagpur—Interest of under-raiyat, void or voidable—Distinction between proceedings with respect to a tenure-holder and a raiyat—Right of under-raiyat to contest the validity of the decree against his lessor.* Where a holding of an occupancy raiyat is sold, the interest of an under-

UNDER-RAIYAT—*concld.*

raiyat is not void but voidable. But when the occupancy holding has been destroyed by eviction of the raiyat for non-payment of rent, s. 82 of Act X of 1859 provides that the decree-holder shall be put in physical possession of the land. There is a clear distinction between proceedings in regard to a tenure-holder and proceedings in regard to a raiyat. Where the proceeding has been with regard to a tenure-holder or under-tenant the decree is to take the form of an order to all raiyats to pay rent to the decree-holder, and the decree-holder cannot be put into actual physical possession of the land. An under-raiyat cannot contest the validity of the decree against his lessor as a defence to a suit in which it is sought to declare him a trespasser. BISHUN NARAIN DASS PODDAR *v.* CHANDRA KANTA NAIK (1916).

20 C. W. N. 1240

UNITED PROVINCES AND OUDH ACTS.

——— **1869—I—**

See OUDH ESTATES ACT.

——— **1873—XIX—**

See N. W. P. LAND REVENUE ACT.

——— **1876—XVII—**

See OUDH LAND REVENUE ACT.

——— **1900—X—**

See N. W. P. AND OUDH MUNICIPALITIES ACT.

——— **1901—II—**

See AGRA TENANCY ACT.

——— **1901—III—**

See UNITED PROVINCES LAND REVENUE ACT.

——— **1903—II—**

See BUNDELKHAND ALIENATION OF LAND ACT.

UNITED PROVINCES LAND REVENUE ACT (III OF 1901).

——— **ss. 56, 86**—*Cess—Rent—Rent payable partly in cash and partly in kind.* Certain tenants holding under a *qabuliat* agreed to pay as rent a fixed sum in money and also certain quantities yearly of *bhusa, chari*, grain and sugarcane, described in the *qabuliat* as *rasum zamindari*. *Held*, that, notwithstanding that the payments in kind were described as "*rasum zamindari*," they were nevertheless part of the rent and could be recovered by the lessor, and did not fall within the purview of s. 56 or s. 86 of the United Provinces Land Revenue Act, 1901. *Sri Ram* v. *Asghar Ali, I. L. R. 35 All. 19*, distinguished. RANGI LAL *v.* JASSA (1916) . . . **I. L. R. 38 All. 286**

——— **ss. 110, 111 and 112**— *Partition—Question of proprietary title.* One of the co-sharers in a village applied in a Court of Revenue for partition, whereupon another of the co-sharers raised the objection that the village had already

UNITED PROVINCES LAND REVENUE ACT (III OF 1901)—*contd.*

——— **s. 110**—*concld.*

been partitioned privately and could not again be divided. *Held*, that this objection raised a question of proprietary title in respect of which the Court of Revenue had jurisdiction to refer the parties to the Civil Court. RAM NARAIN *v.* JAGAN NATH PRASAD (1915) . **I. L. R. 38 All. 115**

——— **s. 111** (*l*) (*b*)—*Partition—Non-applicant required to file suit in Civil Court—Non-compliance with order—Appeal.* A Collector trying a partition case made an order under s. 111 (*l*) (*b*) of the United Provinces Land Revenue Act, 1901, against the non-applicant. He failed to comply with this order, but alleged that in a civil suit between the parties to the partition case it had been decided in respect of certain non-revenue-paying property that both sides were members of a joint Hindu family. The Collector, however, overruled his objection, finding that the ruling did not apply to revenue-paying property. *Held*, that no appeal lay to the District Judge from this order. HAR PRASAD *v.* MUKAND LAL (1915).
I. L. R. 38 All. 70

——— **ss. 111, 112, 233** (*k*)—*Civil Procedure Code (1908), s. 11; O. II, r. 2—Partition—Suit for possession of property, the subject of partition.* A person who was really entitled to one half of a four biswa zamindari share, but was recorded only in respect of a 3¾ biswa share applied for partition of the latter share. After the date fixed for filing objections the person who was recorded in respect of the remaining one-fourth biswa share came in and asked for partition of that one-fourth biswa share. The partition was completed, but subsequently the original applicant brought suit to recover the one-fourth biswa share. *Held*, that the suit was not barred by s. 233 (*k*) of the United Provinces Land Revenue Act (1901), neither was it barred by O. II, r. 2, of the Code of Civil Procedure, inasmuch as that rule did not apply to proceedings under the Land Revenue Act, nor by the rule of *res judicata*. KALKA PRASAD *v.* MANMOHAN LAL (1916).
I. L. R. 38 All. 302

——— **s. 233, cl.** (*k*)—*Civil and Revenue Courts—Jurisdiction—Partition—Land of a third party alleged to be wrongly included in a patti formed by imperfect partition—Suit for recovery of possession in Civil Court.* Where land belonging to one *patti* was, apparently by mistake and without notice to the person who claimed to be the rightful owner thereof, included in another *patti* and made the subject of an imperfect partition, it was *held* that the person who claimed to be the owner of the land so dealt with was not debarred by s. 213 (*k*) of the United Provinces Land Revenue Act, 1901, from suing in the Civil Court to have his right to the land declared and to recover possession thereof. *Muhammad Sadiq* v. *Laute Ram, I. L. R. 23 All. 291*, distinguished. *Quœre:* Whether s. 233 (*k*) of the United Provinces Land Revenue Act, 1901, applies at all to an imperfect

UNITED PROVINCES LAND REVENUE ACT (III OF 1901)—*concld.*

——— **s. 233**—*concld.*

partition. SHAMBHU SINGH *v.* DALJIT SINGH (1916) . . . **I. L. R. 38 All. 243**

UNLIQUIDATED DAMAGES.

See EX PARTE DECREE.
I. L. R. 43 Calc. 1001

UNPROFESSIONAL CONDUCT.

1. ——— *Pleader as litigant—Letter to Munsif threatening legal proceedings to recover costs in execution proceedings, incurred owing to the negligence of the Court officer—Legal Practitioners Act (XVIII of 1879), ss. 13 (b) and 14—Anonymous communication—Contempt of Court.* Where a pleader who was a decree-holder in a certain suit associated himself with his co-decree-holder in a notice to the Munsif threatening legal proceedings to recover costs in an execution proceeding incurred owing to the negligence of the Court officers though the pleader did not sign the notice: *Held*, that what was done by the pleader was done by an individual in the capacity of a suitor in respect of his supposed rights as a suitor and of an imaginary injury done to him as a suitor and it had no connection whatever with his professional character or anything done by him professionally, and that this case was not one within s. 13 (*b*) of the Legal Practitioners Act. *In re Wallace, L. R. 1 P. C. 283, In the matter of Jogendra Narayan Bose, 5 C. W. N. 48, In re a Pleader, 18 Mad. L. J. 14, In the matter of a first grade Pleader, I. L. R. 24 Mad. 17*, and *In the matter of Sarat Chandra Guha, 4 C. W. N. 663*, referred to. *In re* POORNA CHANDRA ADDY (1915).
I. L. R. 43 Calc. 685

2. ——— *Unprofessional conduct—Rules as to receiving instructions and accepting vakalatnamas, compliance with—Judge's duty to enforce compliance and take disciplinary measures on breach—One pleader appearing for another—Practice—Court to be informed.* Where a pleader who was charged with having filed a petition for revival of a suit without authority alleged in defence that he had been instructed to appear by a clerk of the Muktear of the party, and that it had been (erroneously) represented to him that the *vakalatnama* filed in the original suit contained his name: *Held*, that the pleader had acted in contravention of s. 13, cl. (*a*) of the Legal Practitioners Act in the matter of receiving instructions That even if the *vakalatnama* did contain the pleader s name, mere verbal acceptance of it would not be in compliance with cl. (*e*), r. 45, Ch. XI, of the High Court's General Rules and Circular Orders. Where a pleader appears for another pleader who is unable at the moment to attend Court, he ought to let the Court know that he is so appearing. *Per* Richardson *J.*—The rule in regard to the acceptance of *vakalatnamas* should be strictly and scrupulously observed in the Subordinate Courts. In connection with the enforcement of the rules, it is always open to a Judge to refuse to hear a pleader or to

UNPROFESSIONAL CONDUCT—*concld.*

refuse to allow a pleader to act who has not accepted a *vakalatnama* in the prescribed manner. It is also the duty of the Judge to take such action as may be appropriate, in regard to infractions of the rule which escape notice at the time and are brought to light subsequently. *In the matter of* JOGESH CHANDRA GUPTA (1913).

20 C. W. N. 283

3. ——— *Pleader—Altering. Court's record to conceal error due to carelessness* Where a property to be sold in execution of a decree was, through the carelessness of the pleader for the decree-holder and his clerk, misdescribed in the application for execution, in the warrant of attachment and in the sale-proclamation, and after they had been presented to Court, the clerk actuated by a desire to conceal his and his master's carelessness from the decree-holder altered the descriptions and the alterations were initialled by the pleader: *Held* (ordering the pleader's suspension for three months), that to tamper with the Court's records is at all times a serious matter, and the pleader had acted without due care and caution and without that sense of responsibility which should govern the conduct of all officers of the Court in matters of such importance. *In the matter of* A PLEADER (1916). **20 C. W. N. 1069**

USUFRUCTUARY MORTGAGE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 83 . **I. L. R. 39 Mad. 579**

V

VAKALATNAMA.

——— *Practice—High Court—Mofussil Courts—Vakalatnama, acceptance of, by pleaders—Endorsement, if necessary—Civil Procedure Code (Act V of 1908), O. III, r. 4—High Court General Rules and Circular Orders, 1910, Vol. I, Ch. XI, r. 45 (e).* It is not necessary that the acceptance of a *vakalatnama* should be in writing, but the High Court General Rules and Circular Orders 1910, Vol. I, Ch. XI, r. 45(*e*) should be fully complied with by the pleader who accepts the *vakalatnama*. *Per* D. CHATTERJEA *J.*—An appearance or act by a pleader named in the *vakalatnama* (*without his accepting it in writing*) would, if allowed by the Court expressly or by implication, be valid and operative. The High Court rule, however, was made to be followed and is a salutary rule prescribed for safeguarding the interests of litigants and should certainly be followed in the mofussil in the manner indicated by the construction placed on the same in the answers to the several references made to this Court. It must be fully complied with by the pleader who first accepts the *vakalatnama* and all subsequent acceptances must be made by endorsements made in the presence of the Court, or the *Sheristadar*, or the Bench-officer and dated, provided of course all the

VAKALATNAMA—*concld.*

pleaders so accepting a *vakalatanama* are named in it. Courts in the mofussil must be specially careful in enforcing this rule in cases of compromise and withdrawal of cases and withdrawal of money and documents. *Per* BEACHCROFT *J.*—There can be an acceptance by the pleader other than in writing. But if this Court has, in the exercise of its powers, framed certain rules which must be observed by pleaders, a pleader who does not conform to those rules, ought not to be heard. *Quœre:* Whether after the first endorsement by a pleader accepting a *vakalatanama*, a mere endorsement of acceptance by those appearing on the strength of the original *vakalatanama* at subsequent stages of the case is sufficient. MAHESH CHANDRA ADDY *v.* PANCHU MUDALI (1915).

I. L. R. 43 Calc. 884

VALUABLE CONSIDERATION.

See LIMITATION . **I. L. R. 43 Calc. 34**

VALUATION.

See COURT FEES ACT (VII OF 1878), S. 7, CL. (*4*) . **I. L. R. 39 Mad. 725**

See MADRAS CIVIL COURTS ACT (III OF 1873), SS. 12, 13.

I. L. R. 39 Mad. 447

VALUATION OF APPEAL

See CIVIL PROCEDURE CODE, 1908, S. 110.

I. L. R. 38 All. 488

VALUATION OF SUIT.

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 63 . **I. L. R. 38 All. 72**

——— *Investigation as to amount of value of subject-matter of suit—Competence of Court of first instance to remit investigation of dispute to some other officer—Civil Procedure Code (Act V of 1908), O. XLV, r. 5—Practice.* R 5, O. XLV of the Code of Civil Procedure does not empower the Court of first instance, to remit the investigation as to amount or value of subject-matter of suit to some other officer; it must be carried out by that Court. HANSMAN JHA *v.* BAHUJI JHA (1915) . **I. L. R. 43 Calc. 225**

VATANDAR JOSHI.

——— *Right to officiate at marriages—Yajman—Ceremony in Panchakalas Lingayet form—Claim for fees in respect of part of the ceremonial in Hindu form—Ceremony cannot be split up.* The question raised in this appeal was whether the ceremonials observed by Lingayets in marriages are to be regarded as a whole in deciding whether or not the village Gramopadhya is entitled to perform the ceremony or whether the ceremony can be split up into parts, and if it is found that some part of the ceremonial is similar to the Brahmin ritual the Gramopadhya can insist upon payment of fees in respect of such part of the ceremonial as may have been performed by another. *Held*, that, if the ceremony performed was not a Hindu marriage ceremony as a whole, the

VATANDAR JOSHI—*concld.*

Joshi or Gramopadhya had no right to demand the fees. RANGAPPA *v.* VENKANBHAT (1915).
I. L. R. 40 Bom. 112

VENDOR AND PURCHASER.

See SPECIFIC PERFORMANCE.
I. L. R. 43 Calc. 990

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 55 (*4*).
I. L. R. 39 Mad. 997

——— *Conveyance of property by an administratrix having a beneficial interest therein—No words of limitation in the agreement to convey specifying whether it was qua administratrix or qua beneficial owner—Principle to be applied in ascertaining in wha capacity the administratrix acted.* Where a person has two estates, one larger and the other smaller, and purports to convey the entire property without any words or limitation, he must be taken to be conveying the highest estate he has; that is to say, if an executor having a one-third personal beneficial interest in the estate purports to convey the whole of it without qualification or limitation, he must be taken to be conveying, in his character as executor and not in that of one having a beneficial interest only in a fraction of the whole estate purported to be conveyed. *In re Venn & Furze's Contract,* [*1894*] *2 Ch. 101,* followed. No distinction can be maintained in principle between actual conveyance and agreements to convey for the purposes of applying this general rule. GANGABAI *v.* SONABAI (1914).
I. L. R. 40 Bom. 69

VENDOR'S LIEN.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 55 (*4*).
I. L. R. 39 Mad. 997

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 55 (*4*) (*b*).
I. L. R. 38 All. 254

VERIFICATION.

See VERIFICATION OF PLAINT.

VERIFICATION OF PLAINT.

See EX PARTE DECREE.
I. L. R. 43 Calc. 1001

VILLAGE.

——— **change of, from one district to another—**

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863) . **I. L. R. 39 Mad. 949**

VILLAGE MAGISTRATE.

——— **information to—**

See BAILABLE OFFENCE.
I. L. R. 39 Mad. 1006

VOLUNTARY LIQUIDATION.

See COMPANIES ACT (VII OF 1913), S. 207. . **I. L. R. 38 All. 407**

VYAVAHARA MAYUKHA.

See HINDU LAW—MITAKSHARA.
I. L. R. 40 Bom. 621

W

WAIVER.

See CONTRACT ACT (IX OF 1872), SS. 56 (*2*). 65 . . **I. L. R. 40 Bom. 570**

See SALE . **I. L. R. 43 Calc. 790**

WAJIB-UL-ARZ.

See PRE-EMPTION.
I. L. R. 38 All. 27, 260

——— **value of—**

See OUDH ESTATES ACT (I OF 1869), SS. 8, 10 . . **I. L. R. 38 All. 552**

WAKF.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92 . **I. L. R. 40 Bom. 541**

See WAKF, VALIDITY OF.

——— *Mutawalli—Matters connected with wakf being religious matters—Descendant of the founder—Preferential claim to mutawallishipNo right of inheritance—Qadi under the Mahomedan law exercising functions in relation to wakfs—His equivalent in the British Indian system of law—Position of the Subordinate Judge—District Judge, jurisdiction of.* Though a descendant of the founder of a *wakf* property has a preferential claim to the office of the *mutawalli*, he does not become *mutawalli* by right of inheritance but has to be appointed such by the Qadi who may supersede him if he is not so qualified. No right of inheritance attaches to a religious endowment. *Khajeh Salimullah* v. *Abdul Khair M. Mustafa, I. L. R. 37 Calc. 263, Sayad Abdula* v. *Sayad Zain, I. L. R. 13 Bom. 555, Moohummud Sadik* v. *Moohummud Ali, 1 Mac. Sel. Rep. 22,* and *Shahar Banoo* v. *Aga Mohomed, L. R. 34 I. A. 46; I. L. R. 34 Calc. 118,* followed. *Shama Charan* v. *Abdul Kabeer, 3 C. W. N. 158, In re Woozatunnessa Bibi, I. L. R. 36 Calc. 21, In re Halima Khatun, I. L. R. 37 Calc. 870, Nimai Chand* v. *Golam Hossein, I. L. R. 37 Calc. 179, Muhammed* v. *Syed Ahamed, 1 Bom. H. C. R. 18, Jamal* v. *Jamal, I. L. R. 1 Bom. 633, Daud Sha* v. *Ismal Sha, I. L. R. 3 Bom. 72, Baba* v. *Nassaruddin, I. L. R. 18 Bom. 103, A.-G.* v. *Abdul Kadir, I. L. R. 18 Bom. 401, Kudratulla* v. *Mahini Mohan, 4 B. L. R. 134, Mahammed* v. *Ahmed Bhai, I. L. R. 25 Bom. 327, Sayid Ali* v. *Ali Jan, I. L. R. 35 All. 98, Muhammad Abdul Majid* v. *Ahmed Saeed, 11 All. L. J. 673,* referred to. Under the Mahomedan law that Qadi alone was competent to exercise authority in respect of *wakfs* who was so expressly authorised in his letters patent. There was some difference of opinion upon the question whether such express authority was needed where a person was explicitly appointed the Chief Qadi; but even here the balance of opinion of jurists favours the view that

WAKF—*concld*

power should be expressly conferred on the Chief Qadi to validate the administration of *wakfs* by him. There is also authority to show that the supreme authority in the State, by whom the Qadi is appointed, need not be a Mahomedan and although there is some divergence of opinion there is also authority to show that the office of Qadi may be held by a non-Muslim for the decision of disputes between non-Muslims under Muslim protection. As this is a matter regarding religious usages and institutions within the meaning of s. 15 of Regulation IV of 1793, the rights of the parties must be determined with regard to the provisions of the Mahomedan law on the subject. It follows, accordingly, that a Subordinate Judge, who has not been expressly authorised by the Government to exercise functions in connection with the administration of *wakfs*, is not competent to act in that behalf. Whether a District Judge has implied authority to exercise the functions performed by a Qadi under the Mahomedan law is doubtful. In respect of *wakfs* which may be described as trusts created for public purposes of a religious nature within the meaning of sub-s. (*1*) of s. 92 of the Civil Procedure Code, 1908, the District Judge may be assumed to have been authorised to discharge the functions of a Qadi. The real difficulty arises in the case of private *wakfs*. It is desirable that the Local Government should, to cover such cases, authorise either District Judges or Subordinate Judges or even Judicial officers of a lower grade, if necessary, to exercise the functions of a Qadi. ATIMANNESSA BIBI *v.* ABDUL SOBHAN (1915) . . . **I. L. R. 43 Calc. 467**

WAKF, VALIDITY OF.

——— *Deference due to previous decision of High Court as authority—Res judicata—Mussalman Wakf Validating Act (VI of 1913), title, preamable and s. 3, whether retrospective or prospective only—Privy Council decisions and pronouncements on Indian Legislature.* Where there had been a previous adjudication by the High Court on the invalidity of a certain *wakf* based on legal grounds (in a subsequent suit between the same parties):—*Held*, that (*i*) ordinarily that Court should feel bound, not on the principle of *res judicata* but out of the deference which was due to a previous decision of the High Court, to follow that authority; and (*ii*) that the previous conclusive decision had not been affected by the remedial operation of the Mussalman Wakf Validating Act of 1913, which was not retrospective in effect but prospective only. *Rahimunissa Bibi* v. *Shaikh Manik Jan, 19 C. W. N. 76*, approved. It is doubtful whether the Governor-General in Council would make a legislative pronouncement that the repeated decisions of the Privy Council were erroneous, though from its knowledge of the requirements of the country the Legislature may think that in future the law should be otherwise administered. MAHOMED BUKTH MAJUMDAR *v.* DEWAN AJMAN REJA (1915). **I. L. R. 43 Calc. 158**

WAQF.

See WAKF . **I. L. R. 43 Calc. 467**

WAR.

See SALE OF GOODS.
I. L. R. 40 Bom. 11

WARRANT.

See WARRANT OF ARREST.

——— **for search of house—**

See CRIMINAL PROCEDURE CODE, S. 165.
I. L. R. 38 All. 14

WARRANT CASE.

——— **trial of—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 256.
I. L. R. 39 Mad. 503

WARRANT OF ARREST.

See PENAL CODE ACT (XLV OF 1860), S. 225B . **I. L. R. 38 All. 506**

WASTE LANDS.

——— *Government sale—Limitation—Notices—Waste Lands Act (XXIII of 1863), s. 18—Survey Maps.* The procedure provided by the Waste Lands Act, 1863, for the sale of, or dealings with, waste lands does not apply solely to the waste lands held by the Government. The period of limitation provided by s. 18 of that Act for the making of claims is applicable only to proceedings before the Special Court to be constituted under the Act. Those pleading the Act must bring the matter strictly within its provisions by showing that a clear and not misleading intimation of the sale or other transaction has been given; an advertisement of a proposed sale incorrectly stating the name of the *pargana* in which the lands are situated is misleading and insufficient. Revenue Survey maps are not conclusive evidence of the facts which they record, but, in the absence of evidence to the contrary, are to be presumed to be accurate. SECRETARY OF STATE FOR INDIA *v.* MAHARAJAH OF TIPPERA (1916).
L. R. 43 I. A. 303

WASTE LANDS ACT (XXIII OF 1863).

——— **s. 18—**

See WASTE LANDS.
L. R. 43 I. A. 303

WATAN.

See BOMBAY HEREDITARY OFFICES ACT (BOM. III OF 1874), SS. 25, 36.
I. L. R. 40 Bom. 55

WATER-CESS.

See MADRAS WATER-CESS ACT (VII OF 1865) . . **I. L. R. 39 Mad. 67**

WAY.

——— *Public way—Public drain when filled up it becomes public way.* A public drain does not become a public way merely because it is filled up. RAM CHANDRA SIL *v.* RAMANMANI DASI (1916) . **20 C. W. N. 773**

WEEKLY SITTING LIST.

——— notes to the—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 421, 233, 537.
I. L. R. 39 Mad. 527

WIDOW.

See HINDU LAW—ALIENATION.
I. L. R. 43 Calc. 574

See HINDU LAW—ALIENATION BY WIDOW.
I. L. R. 43 Calc. 417

See HINDU WIDOW.

See MAHOMEDAN LAW—DOWER.
I. L. R. 40 Bom. 34

——— alienation by, of her husband's estate—

See HINDU LAW—WIDOW.
I. L. R. 39 Mad. 1035

——— decree against, for husband's debt—

See HINDU LAW—WIDOW.
I. L. R. 39 Mad. 565

WILL.

COL.

1. CONSTRUCTION . . . 429
2. DEMONSTRATIVE LEGACY . 430
3. PROOF 431

See BHAGDARI ACT (BOM. V OF 1862), S. 3 . . **I. L. R. 40 Bom. 207**

See HINDU LAW—ADOPTION.
I. L. R. 40 Bom. 668

See HINDU LAW—WILL.

——— construction of—

See HINDU LAW—WILL.
I. L. R. 38 All. 446

——— revocation of—

See HINDU LAW—WILL.
I. L. R. 39 Mad. 107

1. CONSTRUCTION.

1. ——— *Construction of document—Dedication of property for worship—Devisees to divide profits after paying expenses—Trust.* A testator who owned two houses left one house to one of his two nephews for his own use and as to the other made by his will the following disposition: "In the other dwelling house consisting of three sections of Thakurdwaras including the staircase both the executors aforesaid should reside, put up pilgrims and attend on them jointly and from the income thereof daily perform the usual worship of the gods Murli Dhar, Raj Rajeshri and Mahadeo and the worship on *Basant Panchimi, Ram Naumi, Janam Ashtami, Nauratri, Shivaratri, Dhanurmas* and *Sami* festivals and look after its repairs. After this is done both the executors should make a receipt and disbursement account of the income annually and after deducting the above expenses should divide the profits between

WILL—*contd.*

1. CONSTRUCTION—*concld.*

them in half and half and should grant receipts and acquittances as between themselves. . . . None of the executors shall in any way be entitled to transfer, mortgage or sell this house, and if they do so it will be utterly null and void." *Held*, that the will created a trust and the only beneficial interest given under the will to the nephews was the right to take the surplus profits, if any, after the worship had been performed and the festivals duly observed. MURLIDHAR *v.* DIWAN CHAND (1916). . . . **I. L. R. 38 All. 214**

2. ——— *Bequest to a person not named in the will—Private directions given by the testator to one of his executors—Evidence as to who was intended to have the benefit of the bequest, admissibility of—Succession Act (X of 1865), ss. 62, 67, 68, 69.* A testator provided by his will as follows:—"In accordance with directions that I am going to give in private to trustee No. 1 out of the trustees appointed by me, my trustees should entrust to Haridas Rs. 5,000 that may be received from my life-policy and the shares of Tata & Co. also should be transferred to the person whose name will be disclosed by Haridas." In a suit filed by B praying, *inter alia*, that Haridas should be ordered to disclose the private directions given by the testator and for declaration that she, B, was the person intended by the testator to have the benefit of the bequest. *Held*, (*i*) that Haridas was bound to disclose the private directions given him by the testator and that evidence thereof was admissible, (*ii*) that the second part of the above clause should be read with the first part and that the shares must be transferred to a person whose name was given by the testator to Haridas, and that the power conferred on Haridas was, therefore, not a general but a special one. BAYABAI SAKALKAR *v.* HARIDAS RANCHHORDAS (1914).
I. L. R. 40 Bom. 1

2. DEMONSTRATIVE LEGACY.

——— *Succession Act (X of 1865), ss. 311, 312—Demonstrative legacy—Interest, whether payable on a demonstrative legacy—Where no time for payment fixed by will, the time from which interest runs.* Where a testator had bequeathed legacies to several grand-children named in the will to be paid from the sale-proceeds of certain house property after the death of a daughter and the marriage of a granddaughter and it was contested that inasmuch as there is no specific provision in the Succession Act for the payment of interest on demonstrative legacies no interest was payable: *Held*, (*a*) that interest is payable upon demonstrative legacies; and (*b*) that where there is no time for payment fixed, although the amount is expressly made payable out of a particular fund, the case is governed by the principle laid down in *Lord* v. *Lord, L. R. 2 Ch. App. 782*, and s. 311 of the Succession Act applies. *Held*, also, that the rate of interest is 4 per cent. per annum. *Lord* v. *Lord, L. R. 2 Ch. App. 782, Chinnam Rajamannar*

WILL—*contd.*

2. DEMONSTRATIVE LEGACY—*concld.*

v. *Tadikonda Ramachendra Rao, I. L. R. 29 Mad. 155, Mullins* v. *Smith, 1 Drew & Sm. 204,* and *In re Walford, Kenyon* v. *Walford,* [*1912*] *1 Ch.* 219, referred to and followed. ADMINISTRATOR GENERAL OF BENGAL *v.* A. D. CHRISTIANA (1915). **I. L. R. 43 Calc. 201**

3. PROOF.

1. ——— *Proof of execution and due attestation—Attesting witnesses, turned hostile —Court may find execution proved from other evidence—Proof that testator saw attesting witnesses sign, and latter saw testator sign, if necessary, where will regular on its face—Presumption of due execution.* The mere fact that attesting witnesses to a will have repudiated their signature does not invalidate the will, if it can be proved by evidence of a reliable character that they have given false testimony. When the evidence of the attesting witnesses is vague, doubtful or even conflicting upon some material point, the Court may take into consideration the circumstances of the case and judge from them collectively whether the requirements of the Statute were complied with; in other words, the Court may, on consideration of the other evidence or of the whole circumstances of the case, come to the conclusion that their recollection is at fault, that their evidence is of a suspicious character or that they are wilfully misleading the Court, and accordingly disregard their testimony and pronounce in favour of the will. It is not necessary under the law that affirmative evidence should be forthcoming that the testator did, as a matter of fact, see the attesting witnesses put their signatures or that the attesting witnesses did actually see the testator sign the document. It is enough if the circumstances show that their relative position was such that they might have seen the execution and the attestation respectively Every presumption will be made in favour of due execution and attestation in the case of a will regular on the face of it and apparently duly executed. BRAHMADAT TEWARI *v.* CHAUDAN BIBI (1914) . . . **20 C. W. N. 192**

2. ——— *Proof—Execution in unusual circumstances—Will not inofficious—Witnesses such as were reasonably to be expected to be available in the circumstances, not to be disbelieved merely because their position socially inferior—Beneficiary under will recited as being testator's adopted son—Caveator, if may question adoption—Judge, if may refuse to frame an issue as to adoption, whilst admitting evidence thereon—Relevancy on the question of genuineness of will—Note of evidence to be given by witness, refusal to produce, if should prejudice party—Privilege.* K, a Hindu gentleman of means and resident of a place called Sursand, went accompanied by his two wives and some of his servants and dependants to attend the bathing fair at Sonepur on 10th November 1905. Cholera having broken out at the fair, it was broken up by Government order, but K, who had been suffering

WILL—*contd.*

3. PROOF—*contd.*

from dysentery and had been made nervous about the state of his health by the outbreak of cholera (it was alleged) executed the disputed will on 15th November 1905 and died at 3 A.M. of 16th November 1905. The will was proved by such of the attesting witnesses as were available and other witnesses. The genuineness of the will was challenged, *inter alia,* on the ground that the witnesses to the execution were not of a superior position. The will however appeared to be one which a Hindu gentleman in K's position might reasonably and naturally have made and the attesting witnesses were such as one would reasonably expect to be available on the occasion. *Held,* that there being nothing in the case to suggest that the will had been forged or that the witnesses who gave evidence as to the preparation and as to the due execution of the will had committed perjury, the contention that the will should not be accepted as genuine because the witnesses to its execution were not of a superior position was not sound and was contrary to the view of the law as expressed in *Chotey Narain Singh* v. *Ratan Koer, L. R. 22 I. A. 12, 24,* and *Jagrani Koer* v. *Koer Durga Parshad, L. R. 41 I. A. 80;* s. c. *18 C. W. N. 521.* That something more than mere suspicion is necessary in such a case to make convincing an argument based on the social position of the witnesses. One of the beneficiaries under the will was C, a boy who, the will recited, had been adopted, according to Hindu rites, by K as his son. The caveators questioned the *factum* of the adoption: *Held,* that the trial Judge was right, upon an application for probate, in declining to frame an issue as to the alleged adoption, though the matter had to be considered as bearing on the question of the genuineness of the will and the caveators were not precluded from questioning the adoption and were rightly allowed to cross-examine the propounder's witnesses on that subject and to call evidence to prove that C was not adopted. For the purposes of the propounder's brief a note had been obtained from a witness (subsequently examined at the trial) of the evidence that he could give: *Held,* that the note was privileged from production and the caveators were not entitled to see it, and the Judges should not have allowed their minds to be influenced in considering the evidence by the fact that the note was not produced in Court for the information of the caveators. GENDA KUNWAR *v.* HARNANDAN SINGH (1916). **20 C. W. N. 617**

3. ——— *Proof of genuineness—Clear and trustworthy evidence of attesting witness if to be rejected because appearance of document suspicious—Court, if in such a case, may speculate as to what would have been a proper will for the testator.* Proof of the genuineness of a will depended mainly upon the testimony of a doctor who attested on the last page of the will, the signature of the deceased and who deposed that at the time the will was executed, the deceased

WILL—*concld.*

3. PROOF—*concld.*

was perfectly capable of understanding a business transaction. The will on examination showed that the writing on the last page was inconveniently crowded above the signature of the testator, and, on the last page but one, the writing at the foot was so placed as to lend colour to the suggestion that the page had been filled up after the signature had been attached. Upon this the Trial Judge built the theory that the will had been written in blank pages over signatures of the testator previously obtained: *Held*, that the doctor's evidence, if believed (and which the Judicial Committee did believe), completely destroyed this theory, and that the High Court was right in pronouncing in favour of the genuineness of the will. That it would be most unsafe and most undesirable, in circumstances such as these, to try to spell out from the peculiar form in which a document written in the vernacular appears, a hypothetical answer to the clear, distinct and trustworthy evidence of the doctor who witnessed the will. Where a will has once been made and is apparently in perfect form, and the evidence of the attesting witness is to be trusted, few things can be more dangerous than to attempt to re-create the kind of will that the man ought, in the opinion of the Court, to have made. Once the man's mind is free and clear and is capable of disposing of his property, the way in which it is to be disposed of rests with him, and it is not for any Court to try and discover whether a will could not have been made more consonant either with reason or with justice. ARUNACHELLAM CHETTY *v.* RAMASWAMI CHETTY (1916).
20 C. W. N. 673

WINDING UP.

See COMPANIES ACT (VI OF 1882), SS. 61 125, 151 . **I. L. R. 38 All. 347**

WITNESS.

See CIVIL PROCEDURE CODE (1908), O. XLI, R. 27 . **I. L. R. 38 All. 191**

——— **cross-examination of—**

See MAHOMEDAN LAW—GIFT.
I. L. R. 38 All. 627

WORDS AND PHRASES.

——— **"alienation"—**

See BHAGDARI ACT (BOM. ACT V OF 1862), S. 3 . **I. L. R. 40 Bom. 207**

——— **"any trustees or trustee"—**

See TRUST . **I. L. R. 39 Mad. 597**

——— **capable of instituting suits—**

See LIMITATION . **I. L. R. 43 I. A. 113**

——— **"case"—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 115 . **I. L. R. 40 Bom. 86**

——— **"claiming under"—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 11 . **I. L. R. 40 Bom. 679**

WORDS AND PHRASES—*contd.*

——— **"common gaming house"—**

See PUBLIC GAMBLING ACT (III OF 1867), SS. 1, 3 . **I. L. R. 38 All. 47**

——— **"complaint"—**

See CRIMINAL PROCEDURE CODE, SS. 4, 476 . . **I. L. R. 38 All. 32**

——— **"complaint"—**

See SANCTION FOR PROSECUTION.
I. L. R. 43 Calc. 1152

——— **"compromise"—**

See CRIMINAL PROCEDURE CODE, SS. 248, 345 . . . **20 C. W. N. 1209**

——— **"costs to abide the result"—**

——— **"costs to follow the event"—**

See COSTS . **I. L. R. 39 Mad. 476**

——— **"Court"—**

See PRESS ACT (I OF 1910), S. 3 (*1*), PROVISO . **I. L. R. 39 Mad. 1164**

——— **"criminal trial"—**

See LETTERS PATENT (24 & 25 VICT., C. 104), S. 15 . **I. L. R. 39 Mad. 539**

——— **"delay"—**

See SANCTION FOR PROSECUTION.
I. L. R. 43 Calc. 597

——— **"deposit" in Art. 60 of the Limitation Act)—**

See LIMITATION ACT (IX OF 1908), ARTS. 59, 60 . **I. L. R. 39 Mad. 1081**

——— **"doctrine of feeding the estoppel"—**

See EXPECTANCIES.
I. L. R. 39 Mad. 554

——— **"due and reasonable diligence"—**

See SUMMONS, SERVICE OF.
I. L. R. 43 Calc. 447

——— **"encumbrances"—**

See BENGAL TENANCY ACT, S. 161.
I. L. R. 43 Calc. 178

——— **"food"—**

See MADRAS CITY MUNICIPAL ACT (III OF 1904), BY-LAW 169.
I. L. R. 39 Mad. 362

——— **"Government established by law in British India"—**

See PRESS ACT (I OF 1910), SS. 3 (*1*), 4 (*1*), 17, 19, 20, 22.
I. L. R. 39 Mad. 1085

——— **"hatred" or "contempt"—**

See PRESS ACT (I OF 1910), SS. 3 (*1*), 4 (*1*), 17, 19, 20, 22.
I. L. R. 39 Mad. 1085

——— **"income"—**

See INCOME-TAX ACT (II OF 1886), PART IV, SCH. II, S. 3, CL. (*5*).
I. L. R. 39 Mad. 885

WORDS AND PHRASES—*contd.*

———— "judgment"—

See APPEAL . **I. L. R. 43 Calc. 857**

———— "judicial act"—

See PRESS ACT (I OF 1910), S. 3 (*1*) PROVISO . . **I. L. R. 39 Mad. 1164**

———— "judicial proceedings"—

See SANCTION FOR PROSECUTION. **I. L. R. 43 Calc. 1152**

———— "legal representative"—

See SETTLEMENT BY A HINDU WOMAN ON TRUSTS . **I. L. R. 40 Bom. 341**

———— "misapplication"—

See BOMBAY MUNICIPALITIES ACT (BOM. III OF 1901), S. 42. **I. L. R. 40 Bom. 166**

———— "oath"—

See SANCTION FOR PROSECUTION. **I. L. R. 43 Calc. 597**

———— "opposite party"—

See APPEAL . **I. L. R. 43 Calc. 178**

———— "person in authority"—

See PRACTICE . **I. L. R. 40 Bom. 220**

———— "place"—

See PUBLIC GAMBLING ACT, 1867, SS. 1, 3. **I. L. R. 38 All. 47**

———— "place of public resort"—

See MADRAS CITY POLICE ACT (III OF 1888), S. 75 . **I. L. R. 39 Mad. 886**

———— "plaintiff"—

See LIMITATION ACT (IX OF 1908), SS. 3, 7, SCH. 1, ART. 142. **I. L. R. 40 Bom. 564**

———— "promulgated"—

See PENAL CODE, S. 188. **I. L. R. 39 Mad. 543**

———— "property"—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XL, R. 4. **I. L. R. 39 Mad. 584**

———— "public place"—

See MADRAS CITY POLICE ACT (III OF 1888), S. 75 . **I. L. R. 39 Mad. 886**

———— "publication"—

See TORT . **I. L. R. 39 Mad. 433**

———— "receipt"—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 89 (*b*). **I. L. R. 39 Mad. 429**

———— "son"—

See HINDU LAW—ADOPTION. **I. L. R. 43 Calc. 944**

WORDS AND PHRASES—*concld.*

———— "unable to maintain itself"—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 488. **I. L. R. 39 Mad. 957**

———— "valuable security"—

See PENAL CODE ACT (XLV OF 1860), SS. 30, 467 . **I. L. R. 38 All. 430**

———— "wilful default"—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XL, R. 4. **I. L. R. 39 Mad. 584**

———— "withdrawal"—

See CRIMINAL PROCEDURE CODE, SS. 248, 345 . . . **20 C. W. N. 1209**

———— "without issue"—

See HINDU LAW—ADOPTION. **I. L. R. 43 Calc. 944**

———— "words which are likely or may have a tendency, directly or indirectly, whether by inference, suggestion, allusion, metaphor, implication or otherwise" [in s. 4, (*1*)].

See PRESS ACT (I OF 1910), SS. 3 (*1*), 4 (*1*), 17, 19, 20, 22. **I. L. R. 39 Mad. 1085**

WRITTEN STATEMENT.

———— *filing of, by accused.*

The practice of filing written statements on behalf of accused persons condemned. DEPUTY LEGAL REMEMBRANCER *v.* MATUKDHARI SING (1915). **20 C. W. N. 128**

Y

YAJMAN.

See VATANDAR JOSHI. **I. L. R. 40 Bom. 112**

Z

ZAMINDAR.

See MADRAS ESTATES LAND ACT (I OF 1908), SS. 6, SUB-S. (*6*), 8. **I. L. R. 39 Mad. 944**

ZAMINDARI.

———— sale of—

See EXECUTION OF DECREE. **I. L. R. 38 All. 59**

ZAMINDARI LANDS.

See MADRAS ESTATES LAND ACT (I OF 1908), SS. 6, SUB-S. (*6*), 8. **I. L. R. 39 Mad. 944**

See MADRAS WATER-CESS ACT (VII OF 1865) . **I. L. R. 39 Mad. 67**

CALCUTTA : PRINTED BY SUPDT. GOVT. PRINTING, INDIA, 8, HASTINGS STREET.